

CITY COUNCIL PROCEEDINGS  
June 14, 2023

The City Council of the City of David City, Nebraska, met in open public session at 7:00 p.m. in the meeting room of the City Office at 490 "E" Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on June 8, 2023, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection on the City's website. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Jessica Miller, Council President Bruce Meysenburg, Council members Kevin Woita, Pat Meysenburg, Jim Angell, Keith Marvin, Tom Kobus, City Attorney David Levy, and Interim City Administrator/City Clerk Tami Comte.

Also present for the meeting were: Deputy Clerk Lori Matchett, Police Chief Marla Schnell, Assistant Police Chief Devin Betzen, Special Projects Coordinator Dana Trowbridge, Matt Kalin with JEO Engineering, Brad Swerczek with K-Tech Project Services, David McPhillips, and Jerry Kosch.

The meeting opened with the Pledge of Allegiance.

Mayor Jessica Miller informed the public of the "Open Meetings Act" posted on the west wall of the meeting room and asked those present to please silence their cell phones. Mayor Miller read the speaking guidelines for the City Council meeting. She also reminded the public that if they speak tonight in front of the Council that they must state their name and address for the record.

Council member Keith Marvin made a motion to approve the minutes of the May 24, 2023 meeting of the Mayor and City Council as presented. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Council member Pat Meysenburg made a motion to approve the claim for D-Sign Shop (Council member Jim Angell). Council Member Bruce Meysenburg seconded the motion. The motion carried.

Jim Angell: Abstain (With Conflict), Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 5, Nay: 0, Abstain (With Conflict): 1

Council member Pat Meysenburg made a motion to approval of claims except D-Sign Shop. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Mayor Jessica Miller called for committee and officers reports. She thanked the supervisors for submitting their reports in a timely manner.

Brad Swerczek with K-Tech Project Services introduced himself and explained their findings regarding the Downtown Rooftop Lighting project. He stated that in order to be completely in compliance the lights must be wired to each individual building. He stated that their recommendation would be to engage an electrical engineer for a more permanent solution.

Council member Bruce Meysenburg stated that he wanted to commend the police department on cleaning up the nuisances around town.

Council member Bruce Meysenburg made a motion to approve committee and officer reports as presented. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Council member Keith Marvin made a motion to approve Certificate of Payment #3 in the amount of \$105,917.40 to Velocity Constructors Inc. for the 2022 Water Treatment Plant Upgrades. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

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**Contractor's Application for Payment**

|                     |  |                           |           |
|---------------------|--|---------------------------|-----------|
| Owner:              | City of David City   | Owner's Project No.:      |           |
| Engineer:           | JEO Consulting Group, Inc.                                   | Engineer's Project No.:   | 202024.00 |
| Contractor:         | Velocity Constructors Inc.                                   | Contractor's Project No.: |           |
| Project:            | 2022 Water Treatment Plant Upgrades, SRF Project No. D311686 |                           |           |
| Contract:           | 2022 Water Treatment Plant Upgrades, SRF Project No. D311686 |                           |           |
| Application No.:    | 3  | Application Date:         | 6/5/2023  |
| Application Period: | From 4/1/2023  | to                        | 6/1/2023  |

|  |    |               |
|--|----|---------------|
| 1. Original Contract Price   | \$ | 10,562,772.00 |
| 2. Net change by Change Orders   | \$ | -             |
| 3. Current Contract Price (Line 1 + Line 2)  | \$ | 10,562,772.00 |
| 4. Total Work completed and materials stored to date<br>(Sum of Column G Lump Sum Total and Column J Unit Price Total) | \$ | 295,168.30    |
| 5. Retainage   |    |               |
| a. 5% X \$ 258,769.30 Work Completed =   | \$ | 12,938.47     |
| b. 5% X \$ 36,399.00 Stored Materials =  | \$ | 1,819.95      |
| c. Total Retainage (Line 5.a + Line 5.b)   | \$ | 14,758.42     |
| 6. Amount eligible to date (Line 4 - Line 5.c)   | \$ | 280,409.88    |
| 7. Less previous payments (Line 6 from prior application)  | \$ | 174,492.48    |
| 8. Amount due this application   | \$ | 105,917.40    |
| 9. Balance to finish, including retainage (Line 3 - Line 4 + Line 5.c)   | \$ | 10,282,362.12 |

**Contractor's Certification**

The undersigned Contractor certifies, to the best of its knowledge, the following:

- (1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;
- (2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such liens, security interest, or encumbrances); and
- (3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor: James Sulzbach - Project Manager Velocity Constructors  
 Signature: James Sulzbach Date: 6/5/2023

|                         |                   |
|-------------------------|-------------------|
| Recommended by Engineer | Approved by Owner |
| By: _____               | By: _____         |
| Title: _____            | Title: _____      |
| Date: _____             | Date: _____       |

Progress Estimate - Lump Sum Work Contractor's Application for Payment

| Owner: City of David City  |   | Owner's Project No.:      |  | 202024.00         |                                       |  |                                  |                                |
|--|---|---------------------------|--|-------------------|---------------------------------------|--|----------------------------------|--------------------------------|
| Engineer: JEO Consulting Group, Inc.                                     |   | Engineer's Project No.:   |  | 202024.00         |                                       |  |                                  |                                |
| Contractor: Velocity Constructors Inc.                                   |   | Contractor's Project No.: |  |                   |                                       |  |                                  |                                |
| Project: 2022 Water Treatment Plant Upgrades, SRF Project No. D311686    |   |                           |  |                   |                                       |  |                                  |                                |
| Contract: 2022 Water Treatment Plant Upgrades, SRF Project No. D311686   |   |                           |  |                   |                                       |  |                                  |                                |
| Application No.:   | 3   | Application Period:       | From 04/01/23 to 06/01/23              | Application Date: | 06/05/23                              |  |                                  |                                |
| A  | B   | C                         | D                                      | E                 | F                                     | G  | H                                | I                              |
| Item No.   | Description   | Scheduled Value (\$)      | Work Completed                         |                   | Currently Stored (not in D or E) (\$) | Work Completed and Materials Stored to Date (D + E + F) (\$) | % of Scheduled Value (G / C) (%) | Balance to Finish (C - G) (\$) |
|  |   |                           | (D + E) From Previous Application (\$) | This Period (\$)  |                                       |  |                                  |                                |
| Original Contract  |   |                           |  |                   |                                       |  |                                  |                                |
| <b>BASE BID GROUP A - General Water Plant Improvements<sup>1</sup></b>   |   |                           |  |                   |                                       |  |                                  |                                |
| B-1.01   | Mobilization  | 1,030,293.00              | 103,029.30                             |                   |                                       | 103,029.30   | 10%                              | 927,263.70                     |
| B-1.02   | Bonding and Insurance   | 66,647.00                 | 66,647.00                              |                   |                                       | 66,647.00  | 100%                             | -                              |
| B-1.03   | Aerator Rehabilitation and Cleaning   | 114,481.00                |  |                   |                                       | -  | 0%                               | 114,481.00                     |
| B-1.04   | Existing Pipe Cleaning & Repainting   | 57,573.00                 |  |                   |                                       | -  | 0%                               | 57,573.00                      |
| B-1.05   | Electrical Improvements, Complete   | 1,840,041.00              | 11,000.00                              | 9,000.00          |                                       | 20,000.00  | 1%                               | 1,820,041.00                   |
| B-1.06   | Demolition of Exterior Infrastructure   | 32,732.00                 |  | 25,000.00         |                                       | 25,000.00  | 76%                              | 7,732.00                       |
| B-1.07   | Demolition of Interior Infrastructure   | 90,500.00                 |  |                   |                                       | -  | 0%                               | 90,500.00                      |
| B-1.08   | Building Improvements (Doors/Windows)   | 80,036.00                 |  |                   |                                       | -  | 0%                               | 80,036.00                      |
| B-1.09   | Building Improvements (Interior Painting)   | 523,405.00                |  |                   |                                       | -  | 0%                               | 523,405.00                     |
| B-1.10   | First Floor Roof Membrane Replacement   | 174,179.00                |  |                   |                                       | -  | 0%                               | 174,179.00                     |
| B-1.11   | Skylight Replacement  | 48,568.00                 |  |                   |                                       | -  | 0%                               | 48,568.00                      |
| B-1.12   | HVAC Improvements   | 148,128.00                |  |                   |                                       | -  | 0%                               | 148,128.00                     |
| B-1.13   | Plumbing Improvements   | 92,021.00                 |  |                   |                                       | -  | 0%                               | 92,021.00                      |
| B-1.14   | Lab Improvements  | 21,099.00                 |  |                   |                                       | -  | 0%                               | 21,099.00                      |
| B-1.15   | Hardness Monitoring Equipment and Meters  | 77,743.00                 |  |                   |                                       | -  | 0%                               | 77,743.00                      |
| B-1.16   | Site Paving and Grading   | 58,690.00                 |  |                   |                                       | -  | 0%                               | 58,690.00                      |
| B-1.17   | Fencing and Gates   | 58,513.00                 |  | 2,000.00          |                                       | 2,000.00   | 3%                               | 56,513.00                      |
| B-1.18   | Misc. Site Improvements   | 148,846.00                |  |                   |                                       | -  | 0%                               | 148,846.00                     |
| B-1.19   | Exterior Piping Improvements  | 338,999.00                |  | 2,000.00          | 36,399.00                             | 38,399.00  | 11%                              | 300,600.00                     |
| B-1.20   | Seeding, Fertilizer and Mulch   | 6,610.00                  |  |                   |                                       | -  | 0%                               | 6,610.00                       |
| B-1.21   | Erosion Control   | 5,751.00                  |  | 5,000.00          |                                       | 5,000.00   | 87%                              | 751.00                         |
| <b>BASE BID GROUP B - Gravity Filter System Improvements<sup>4</sup></b> |   |                           |  |                   |                                       |  |                                  |                                |
| B-1.22   | New Gravity Filter Equipment, Complete (Media/Wash Troughs/ Air Blower/ Control Panel / Solenoid Panel / Instrumentation / Piping / Valves / Media Strainers) | 693,132.00                |  |                   |                                       | -  | 0%                               | 693,132.00                     |
| B-1.23   | Gravity Filter Equipment Installation   | 45,979.00                 |  |                   |                                       | -  | 0%                               | 45,979.00                      |
| B-1.24   | Electrical  | 25,200.00                 |  |                   |                                       | -  | 0%                               | 25,200.00                      |



| Progress Estimate - Lump Sum Work                            |   |                              |   |                     |  | Contractor's Application for Payment  |                                      |   |          |
|--|---|------------------------------|---|---------------------|--|---|--------------------------------------|---|----------|
| Owner:   | City of David City  |                              |   |                     |  | Owner's Project No.:  |                                      |   |          |
| Engineer:  | JED Consulting Group, Inc.  |                              |   |                     |  | Engineer's Project No.:   | 202024.00                            |   |          |
| Contractor:  | Velocity Constructors Inc.  |                              |   |                     |  | Contractor's Project No.:   |                                      |   |          |
| Project:   | 2022 Water Treatment Plant Upgrades, SRF Project No. D311686      |                              |   |                     |  |   |                                      |   |          |
| Contract:  | 2022 Water Treatment Plant Upgrades, SRF Project No. D311686      |                              |   |                     |  |   |                                      |   |          |
| Application No.:   | 3   |                              | Application Period:                           | From                | 04/01/23   | to  | 06/01/23                             | Application Date:                         | 06/05/23 |
| Item No.   | Description   | C<br>Scheduled Value<br>(\$) | D<br>Work Completed                           |                     | F<br>Currently Stored<br>(not in D or E)<br>(\$) | G<br>Work Completed<br>and Materials<br>Stored to Date<br>(D + E + F)<br>(\$) | H<br>% of Scheduled<br>Value (G / C) | I<br>Balance to Finish<br>(C - G)<br>(\$) |          |
|  |   |                              | D + E From<br>Previous<br>Application<br>(\$) | This Period<br>(\$) |  |   |                                      |   |          |
| <b>BASE BID GROUP C - Reverse Osmosis<sup>1</sup></b>        |   |                              |   |                     |  |   |                                      |   |          |
| B-1.25   | CCRO and CIP Tank Skids (Equipment Only)                          | 2,126,760.00                 |   |                     |  | -   | 0%                                   | 2,126,760.00                              |          |
| B-1.26   | CCRO and CIP Tank Skids (Installation)                            | 7,208.00                     |   |                     |  | -   | 0%                                   | 7,208.00                                  |          |
| B-1.27   | Existing Maintenance Facility Demolition                          | 27,093.00                    |   | 27,093.00           |  | 27,093.00   | 100%                                 | -   |          |
| B-1.28   | RO Room Expansion, Block Construction                             | 245,926.00                   |   | 1,000.00            |  | 1,000.00  | 0%                                   | 244,926.00                                |          |
| B-1.29   | New Existing Maintenance Facility Floor Pavement                  | 3,174.00                     | 500.00  | 500.00              |  | 1,000.00  | 31%                                  | 2,174.00                                  |          |
| B-1.30   | New Existing Maintenance Facility Roof                            | 28,709.00                    |   |                     |  | -   | 0%                                   | 28,709.00                                 |          |
| B-1.31   | Overhead Doors  | 22,781.00                    |   |                     |  | -   | 0%                                   | 22,781.00                                 |          |
| B-1.32   | Access Doors  | 8,791.00                     |   |                     |  | -   | 0%                                   | 8,791.00                                  |          |
| B-1.33   | Single Girder Bridge Crane & Hoist (Equipment Only)               | 20,361.00                    |   |                     |  | -   | 0%                                   | 20,361.00                                 |          |
| B-1.34   | Single Girder Bridge Crane & Hoist (Installation)                 | 12,387.00                    |   |                     |  | -   | 0%                                   | 12,387.00                                 |          |
| B-1.35   | Below Grade CCRO Skid Piping, Complete                            | 57,740.00                    |   |                     |  | -   | 0%                                   | 57,740.00                                 |          |
| B-1.36   | Above Grade CCRO & CIP Skid Piping, Complete                      | 129,743.00                   |   |                     |  | -   | 0%                                   | 129,743.00                                |          |
| B-1.37   | Electrical  | 10,080.00                    |   |                     |  | -   | 0%                                   | 10,080.00                                 |          |
| <b>BASE BID GROUP D - Intermediate Clearwell<sup>1</sup></b> |   |                              |   |                     |  |   |                                      |   |          |
| B-1.38   | Intermediate Clearwell Structural Concrete                        | 170,506.00                   | 500.00  | 500.00              |  | 1,000.00  | 1%                                   | 169,506.00                                |          |
| B-1.39   | Clearwell Hatches   | 15,613.00                    |   |                     |  | -   | 0%                                   | 15,613.00                                 |          |
| B-1.40   | Vertical Turbine Pumps  | 113,608.00                   |   |                     |  | -   | 0%                                   | 113,608.00                                |          |
| B-1.41   | Deaerator (Equipment Only)  | 112,153.00                   |   |                     |  | -   | 0%                                   | 112,153.00                                |          |
| B-1.42   | Deaerator (Installation)  | 6,407.00                     |   |                     |  | -   | 0%                                   | 6,407.00                                  |          |
| B-1.43   | Pump Building, Block Construction                                 | 116,781.00                   |   | 1,000.00            |  | 1,000.00  | 1%                                   | 115,781.00                                |          |
| B-1.44   | Stairs and Miscellaneous Metals                                   | 4,603.00                     |   |                     |  | -   | 0%                                   | 4,603.00                                  |          |
| B-1.45   | Clearwell Ladders   | 4,749.00                     |   |                     |  | -   | 0%                                   | 4,749.00                                  |          |
| B-1.46   | Fluid Applied Exterior Membrane                                   | 103,757.00                   |   |                     |  | -   | 0%                                   | 103,757.00                                |          |
| B-1.47   | Intermediate Clearwell Piping, Fittings, Valves, Meters, Complete | 77,335.00                    |   | 1,000.00            |  | 1,000.00  | 1%                                   | 76,335.00                                 |          |
| B-1.48   | Weir Plate and Weir Window  | 4,398.00                     |   |                     |  | -   | 0%                                   | 4,398.00                                  |          |
| B-1.49   | Electrical  | 50,400.00                    |   |                     |  | -   | 0%                                   | 50,400.00                                 |          |

Progress Estimate - Lump Sum Work

Contractor's Application for Payment

| Owner: City of David City   |  | Engineer: JEO Consulting Group, Inc.          |  | Contractor: Velocity Constructors Inc. |                     | Project: 2022 Water Treatment Plant Upgrades, SRF Project No. D311686 |   | Contract: 2022 Water Treatment Plant Upgrades, SRF Project No. D311686 |                                       | Owner's Project No.:   | 202024.00                        |
|---|--|---|--|--|---------------------|---|---|--|---------------------------------------|--|----------------------------------|
| Application No.: 3  |  | Application Period: From 04/01/23 to 06/01/23 |  | Application Date: 06/05/23             |                     |   |   |  |                                       |  |                                  |
| A   | B  | C   | D                                      |  | F                   | G   | H | I  | Work Completed                        |  |                                  |
|   |  |   | [D + E] From Previous Application (\$) | This Period (\$)                       |                     |   |   |  | Currently Stored (not in D or E) (\$) | Work Completed and Materials Stored to Date [D + E + F] (\$) | % of Scheduled Value [G / C] (%) |
| Item No.  | Description  | Scheduled Value (\$)                          |  |  |                     |   |   |  |                                       |  |                                  |
| <b>BASE BID GROUP E - Chemical Feed System Improvements<sup>1</sup></b> |  |   |  |  |                     |   |   |  |                                       |  |                                  |
| B-1.50  | Chemical Feed System Improvements                              | 149,305.00                                    |  |  |                     |   |   | 0%   |                                       | 149,305.00   |                                  |
| B-1.51  | Gas Chlorine System Improvements                               | 62,365.00                                     |  |  |                     |   |   | 0%   |                                       | 62,365.00  |                                  |
| B-1.52  | Electrical   | 15,120.00                                     |  |  |                     |   |   | 0%   |                                       | 15,120.00  |                                  |
| <b>BASE BID GROUP F - Backwash Improvements<sup>1</sup></b>             |  |   |  |  |                     |   |   |  |                                       |  |                                  |
| B-1.53  | Backwash Waste Pump and Piping Improvements, Complete          | 161,971.00                                    |  | 1,000.00                               |                     | 1,000.00  |   | 1%   |                                       | 160,971.00   |                                  |
| B-1.54  | Proposed Manhole Improvements                                  | 1,551.00                                      |  |  |                     |   |   | 0%   |                                       | 1,551.00   |                                  |
| B-1.55  | Backwash PR Access Hatch                                       | 3,727.00                                      |  |  |                     |   |   | 0%   |                                       | 3,727.00   |                                  |
| B-1.56  | Backwash Supply Pump and Piping Improvements, Complete         | 103,300.00                                    |  |  |                     |   |   | 0%   |                                       | 103,300.00   |                                  |
| B-1.57  | Electrical/Generator   | 252,000.00                                    | 2,000.00                               |  |                     | 2,000.00  |   | 1%   |                                       | 250,000.00   |                                  |
| <b>Bid Alternate #1</b>   |  |   |  |  |                     |   |   |  |                                       |  |                                  |
| BA1-1   | Gravity Filter Effluent Valve Replacement <sup>1</sup>         | 220,730.00                                    |  |  |                     |   |   | 0%   |                                       | 220,730.00   |                                  |
| <b>Bid Alternate #2</b>   |  |   |  |  |                     |   |   |  |                                       |  |                                  |
| BA2-1   | Demolish Existing Upflow Clarifier Unit, Complete <sup>1</sup> | 113,190.00                                    |  |  |                     |   |   | 0%   |                                       | 113,190.00   |                                  |
| <b>Original Contract Totals</b>   |  | <b>\$ 10,343,448.00</b>                       | <b>\$ 183,676.30</b>                   | <b>\$ 75,093.00</b>                    | <b>\$ 36,399.00</b> | <b>\$ 295,168.30</b>  |   | <b>3%</b>  |                                       | <b>\$ 10,048,279.70</b>                                      |                                  |
| <b>Original Contract and Change Orders</b>                              |  |   |  |  |                     |   |   |  |                                       |  |                                  |
| <b>Project Totals</b>   |  | <b>\$ 10,343,448.00</b>                       | <b>\$ 183,676.30</b>                   | <b>\$ 75,093.00</b>                    | <b>\$ 36,399.00</b> | <b>\$ 295,168.30</b>  |   | <b>3%</b>  |                                       | <b>\$ 10,048,279.70</b>                                      |                                  |

<sup>1</sup> Sales Tax for Materials & Equipment Included

| Progress Estimate - Unit Price Work                                    |   |   |       |                 |                                |   |  |  |  | Contractor's Application for Payment |                                |
|--|---|---|-------|-----------------|--------------------------------|---|--|--|--|--------------------------------------|--------------------------------|
| Owner: City of David City  |   | Engineer: JEO Consulting Group, Inc.                                  |       |                 |                                |   |  | Owner's Project No.: 2020204.00            |  |                                      |                                |
| Contractor: Velocity Constructors Inc.                                 |   | Project: 2022 Water Treatment Plant Upgrades, SRP Project No. D311686 |       |                 |                                |   |  | Engineer's Project No.:                    |  |                                      |                                |
| Contract: 2022 Water Treatment Plant Upgrades, SRP Project No. D311686 |   | Contractor's Project No.:   |       |                 |                                |   |  |  |  |                                      |                                |
| Application No.: 3   |   | Application Period: From 04/01/23 to 06/01/23                         |       |                 |                                | Application Date: 06/05/23                  |  |  |  |                                      |                                |
| A  | B   | Contract Information  |       |                 | Work Completed                 |   |  | I  | J  | K                                    | L                              |
| Bid Item No.   | Description                               | Item Quantity   | Units | Unit Price (\$) | Value of Bid Item (C X E) (\$) | Estimated Quantity Incorporated in the Work | Value of Work Completed to Date (E X G) (\$) | Materials Currently Stored (not in G) (\$) | Work Completed and Materials Stored to Date (H + I) (\$) | % of Value of Item (J / F) (%)       | Balance to Finish (F - J) (\$) |
| Original Contract  |   |   |       |                 |                                |   |  |  |  |                                      |                                |
| Base Bid <sup>1</sup>  |   |   |       |                 |                                |   |  |  |  |                                      |                                |
| B-2  | Install Aggregate Surfacing               | 358.00  | TONS  | 42.50           | 15,215.00                      |   | -  |  | -  | 0%                                   | 15,215.00                      |
| B-3  | Final Cleanwell Roof Slab Rehabilitation  | 200.00  | SF    | 140.30          | 28,060.00                      |   | -  |  | -  | 0%                                   | 28,060.00                      |
| Bid Alternate #3   |   |   |       |                 |                                |   |  |  |  |                                      |                                |
| BA3-1  | Install 6" Concrete Pavement <sup>1</sup> | 1,324.00  | SY    | 145.50          | 190,079.00                     |   | -  |  | -  | 0%                                   | 190,079.00                     |
| Original Contract Totals:  |   |   |       |                 | \$ 219,324.00                  |   | \$ -   | \$ -                                       | \$ -   | 0%                                   | \$ 219,324.00                  |
| Original Contract and Change Orders                                    |   |   |       |                 |                                |   |  |  |  |                                      |                                |
| Project Totals:  |   |   |       |                 | \$ 219,324.00                  |   | \$ -   | \$ -                                       | \$ -   | 0%                                   | \$ 219,324.00                  |

<sup>1</sup> Sales Tax for Materials & Equipment Included





# INVOICE

1830 Craig Park Court  
 St. Louis, MO 63146

Invoice # S894991  
 Invoice Date 5/31/23  
 Account # 141752  
 Sales Rep SCOT ANDREANO  
 Phone # 402-896-6173  
 Branch #237 Omaha, NE  
 Total Amount Due \$36,399.93

Remit To:  
 CORE & MAIN LP  
 PO BOX 28330  
 ST LOUIS, MO 63146

VELOCITY CONSTRUCTORS, INC. 000/0000  
 2107 W COLLEGE AVE 00000  
 ENGLEWOOD CO 80110 1107

Shipped To:  
 1220 E STREET  
 DAVID CITY, NE

CUSTOMER JOB- DAVIDCT DAVID CITY WTP

Thank you for the opportunity to serve you! We appreciate your prompt payment.

| Date Ordered | Date Shipped | Customer PO # | Job Name       | Job #   | Bill of Lading | Shipped Via | Invoice# |
|--------------|--------------|---------------|----------------|---------|----------------|-------------|----------|
| 5/19/23      | 5/24/23      | SEE BELOW     | DAVID CITY WTP | DAVIDCT |                | DIRECT      | S894991  |

| Product Code | Description | Quantity |         |     | Price | UM | Extended Price |
|--------------|-------------|----------|---------|-----|-------|----|----------------|
|              |             | Ordered  | Shipped | B/O |       |    |                |

CUSTOMER PO#- DAVID CITY WTP

CORE & MAIN PO#- 1319231

|          |                                     |     |     |  |             |           |
|----------|-------------------------------------|-----|-----|--|-------------|-----------|
| 0120250T | 20 TJ PR250 DI PIPE<br>BID SEQ# 70  | 140 | 140 |  | 96.14000 FT | 13,459.60 |
| 0114250T | 14 TJ PR250 DI PIPE<br>BID SEQ# 310 | 200 | 200 |  | 57.40000 FT | 11,480.00 |
| 0108350T | 8 TJ PR350 DI PIPE<br>BID SEQ# 440  | 280 | 280 |  | 31.86000 FT | 8,920.80  |

Freight    Delivery    Handling    Restock    Misc

Terms: NET 30  
 Ordered By: TRIEU

Subtotal: 33,860.40  
 Other: .00  
 Tax: 2,539.53  
 Invoice Total: \$36,399.93

This transaction is governed by and subject to Core & Main's standard terms and conditions, which are incorporated by reference and accepted.  
 To review these terms and conditions, please visit: <http://tandc.coreandmain.com/>

Council member Kevin Woita made a motion to approve Certificate of Payment #10 for M.E. Collins Contracting Co., Inc. in the amount of \$93,382.40 for the "O" Street Project. Council Member Jim Angell seconded the motion. The motion carried.  
 Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
 Yea: 6, Nay: 0

CERTIFICATE OF PAYMENT: 10

Date of Issuance: May 16, 2023

Project: Municipal Paving Improvements, David City, Nebraska - 2022



Project No.: 021-07066

Contractor: M.E. Collins Contracting Co., Inc.

| DETAILED ESTIMATE   |            |           |
|---|------------|-----------|
| Description   | Unit Price | Extension |
| See Attached.   |            |           |
| PLEASE REMIT PAYMENT TO: M.E. Collins Contracting Co., Inc. |            |           |

Value of Work Completed This Request: \$93,382.40

Original Contract Cost: \$1,848,434.00

Approved Change Orders:

|       |                    |
|-------|--------------------|
| No. 1 | <u>\$0.00</u>      |
| No. 2 | <u>\$47,250.00</u> |
| No. 3 | <u>\$9,100.00</u>  |
| No. 4 | <u>\$0.00</u>      |
| No. 5 | <u>\$22,412.00</u> |
| No. 6 | <u>\$8,050.00</u>  |
| No. 7 | <u>\$3,356.00</u>  |

Total Contract Cost: \$1,938,602.00

Value of completed work and materials stored to date ..... \$1,848,864.90

Less retainage percentage 5% ..... \$92,421.70

Net amount due including this estimate ..... \$1,754,443.20

Less: Estimates previously approved:

|       |                     |       |                     |       |                     |
|-------|---------------------|-------|---------------------|-------|---------------------|
| No. 1 | <u>\$9,064.80</u>   | No. 3 | <u>\$116,932.09</u> | No. 5 | <u>\$543,937.23</u> |
| No. 2 | <u>\$189,875.93</u> | No. 4 | <u>\$79,720.20</u>  | No. 6 | <u>\$443,793.80</u> |

Total Previous Estimates: \$1,661,060.80

**NET AMOUNT DUE THIS ESTIMATE: \$93,382.40**

The undersigned hereby certifies, based upon periodic observations as set forth in scope of work and the data included in all applicable payment applications that, to the best of its knowledge, information and belief: (1) the work has progressed as indicated in the applicable payment applications; (2) the work performed and materials delivered by Contractor are in conformance with the plans and specifications; and (3) the Contractor, in accordance with the contract, is entitled to payment as indicated above.

This certification does not constitute a warranty or guarantee of any type. Client shall hold its Contractor solely responsible for the quality and completion of the Project, including construction in accordance with the construction documents. Any duty or obligation of Olsson hereunder is for the sole benefit of the Client and not for any third party, including the Contractor or any Subcontractor.

cc: City of David City - Owner  
 M.E. Collins Contracting Co., Inc.  
 Project File

OLSSON

By: 



Pay App. 10 Project: Municipal Paving Improvements, David City, Nebraska - 2022 Project #: 021-07000  
 Contractor: M.E. Collins Contracting Co., Inc. Date: 5/16/2023

| ITEM NO. | DESCRIPTION/QUANTITY                         | PAY UNIT | TOTAL QTY | SCHEDULED VALUE (\$1.00) | UNIT PRICE (\$1.00)        |                             | TOTAL FROM QUANTITY | QTY PER PERIOD | TOTAL FROM PERIOD | MATERIALS PRESENTLY IN STOCK (\$1.00) | TOTAL QUANTITY TO DATE (\$1.00) | TOTAL COMPLETED AND STORED TO DATE (\$1.00) | % COMPLETED | BALANCE TO BE PAID (\$1.00) | REVISIONS   |
|----------|--|----------|-----------|--------------------------|----------------------------|-----------------------------|---------------------|----------------|-------------------|---------------------------------------|---------------------------------|---|-------------|-----------------------------|-------------|
|          |  |          |           |                          | City from invoice (\$1.00) | Total from invoice (\$1.00) |                     |                |                   |                                       |                                 |   |             |                             |             |
| 1        | Rehabilitation/Recon/Installation            | L.S.     | 1         | \$60,857.00              | \$60,857.00                | 1.00                        | \$60,857.00         | 0.00           | \$0.00            |                                       | 1.00                            | \$60,857.00                                 | 100%        | \$0.00                      | \$4,945.79  |
| 2        | Build 8" Concrete Pavement w/Integral Curb   | S.Y.     | 12196     | \$73.00                  | \$888,118.00               | 11,961.00                   | \$67,613.00         | 594.00         | \$14,162.00       |                                       | 12,175.00                       | \$888,175.00                                | 100%        | \$657.00                    | \$44,476.51 |
| 3        | Build 8" Concrete Driveway                   | S.Y.     | 801       | \$71.00                  | \$56,871.00                | 525.50                      | \$37,210.50         | 264.00         | \$19,744.00       |                                       | 789.50                          | \$56,615.50                                 | 96%         | \$876.50                    | \$2,855.11  |
| 4        | Build 8" Concrete Sidewalk                   | S.Y.     | 12372     | \$57.00                  | \$705,564.00               | 625.00                      | \$35,525.00         | 377.50         | \$21,498.00       |                                       | 1,002.00                        | \$727,114.00                                | 73%         | \$23,676.00                 | \$2,358.15  |
| 5        | Build Concrete Curb/1                        | S.Y.     | 104       | \$67.00                  | \$6,968.00                 | 0.00                        | \$0.00              | 0.00           | \$0.00            |                                       | 0.00                            | \$6,968.00                                  | 100%        | \$0.00                      | \$0.00      |
| 6        | Detachable Warning Panel                     | S.F.     | 180       | \$51.00                  | \$9,180.00                 | 0.00                        | \$0.00              | 72.00          | \$3,672.00        |                                       | 72.00                           | \$3,672.00                                  | 40%         | \$5,508.00                  | \$182.79    |
| 7        | Build 2" Crushed Rock Driveway               | TONS     | 34.4      | \$91.00                  | \$3,136.40                 | 0.00                        | \$0.00              | 34.40          | \$3,136.40        |                                       | 34.40                           | \$3,136.40                                  | 100%        | \$0.00                      | \$125.21    |
| 8        | Build Area Inlet (2)                         | EA.      | 7         | \$2,622.00               | \$17,554.00                | 7.00                        | \$27,521.00         | 0.00           | \$0.00            |                                       | 7.00                            | \$27,521.00                                 | 100%        | \$0.00                      | \$1,377.72  |
| 9        | Build Curb Inlet                             | EA.      | 8         | \$2,060.00               | \$47,136.00                | 4.00                        | \$23,268.00         | 4.00           | \$23,586.00       |                                       | 8.00                            | \$47,136.00                                 | 100%        | \$0.00                      | \$2,358.80  |
| 10       | Build Storm Sewer Manhole                    | EA.      | 11        | \$6,836.00               | \$73,229.00                | 11.00                       | \$73,229.00         | 0.00           | \$0.00            |                                       | 11.00                           | \$73,229.00                                 | 100%        | \$0.00                      | \$3,054.25  |
| 11       | Build Concrete Collar                        | EA.      | 1         | \$2,676.00               | \$2,676.00                 | 1.00                        | \$2,676.00          | 0.00           | \$0.00            |                                       | 1.00                            | \$2,676.00                                  | 100%        | \$0.00                      | \$166.87    |
| 12       | Build 18" Round end section                  | EA.      | 2         | \$1,234.00               | \$2,468.00                 | 1.00                        | \$1,234.00          | 0.00           | \$0.00            |                                       | 1.00                            | \$1,234.00                                  | 50%         | \$81.75                     | \$61.75     |
| 13       | Build 24" Round equipment lined end section  | EA.      | 13        | \$1,423.00               | \$16,499.00                | 14.00                       | \$19,922.00         | 0.00           | \$0.00            |                                       | 14.00                           | \$19,922.00                                 | 100%        | \$1,423.00                  | \$666.85    |
| 14       | Build storm sewer tie                        | EA.      | 1         | \$4,104.00               | \$4,104.00                 | 1.00                        | \$4,104.00          | 0.00           | \$0.00            |                                       | 1.00                            | \$4,104.00                                  | 100%        | \$0.00                      | \$225.37    |
| 15       | Install 18" storm sewer pipe                 | L.F.     | 459       | \$64.00                  | \$29,376.00                | 459.00                      | \$29,376.00         | 0.00           | \$0.00            |                                       | 459.00                          | \$29,376.00                                 | 100%        | \$0.00                      | \$1,475.25  |
| 16       | Install 18" storm sewer pipe                 | L.F.     | 2293      | \$67.00                  | \$153,831.00               | 2,293.00                    | \$153,831.00        | 0.00           | \$0.00            |                                       | 2,293.00                        | \$153,831.00                                | 100%        | \$0.00                      | \$7,868.08  |
| 17       | Install 24" round equipment storm sewer pipe | L.F.     | 190       | \$120.00                 | \$22,800.00                | 209.00                      | \$27,366.00         | 0.00           | \$0.00            |                                       | 209.00                          | \$27,366.00                                 | 100%        | \$2,128.00                  | \$1,371.98  |
| 18       | Build the hydrant assembly                   | EA.      | 2         | \$7,766.00               | \$15,532.00                | 0.00                        | \$0.00              | 0.00           | \$0.00            |                                       | 0.00                            | \$0.00                                      | 0%          | \$15,532.00                 | \$0.00      |
| 19       | Reconnect T-water services                   | EA.      | 1         | \$205.00                 | \$205.00                   | 0.00                        | \$0.00              | 0.00           | \$0.00            |                                       | 0.00                            | \$0.00                                      | 0%          | \$205.00                    | \$0.00      |
| 20       | 12" water main lowering                      | EA.      | 1         | \$7,862.00               | \$7,862.00                 | 0.00                        | \$0.00              | 0.00           | \$0.00            |                                       | 0.00                            | \$0.00                                      | 0%          | \$7,862.00                  | \$0.00      |
| 21       | 4" water main lowering                       | EA.      | 1         | \$2,479.00               | \$2,479.00                 | 1.00                        | \$2,479.00          | 0.00           | \$0.00            |                                       | 1.00                            | \$2,479.00                                  | 100%        | \$0.00                      | \$174.10    |
| 22       | Adjust the hydrant to grade                  | EA.      | 2         | \$1,122.00               | \$2,244.00                 | 0.00                        | \$0.00              | 0.00           | \$0.00            |                                       | 0.00                            | \$0.00                                      | 0%          | \$2,244.00                  | \$0.00      |
| 23       | Adjust valve to grade                        | EA.      | 7         | \$432.00                 | \$3,024.00                 | 5.00                        | \$2,160.00          | 2.00           | \$864.00          |                                       | 7.00                            | \$3,024.00                                  | 100%        | \$0.00                      | \$151.23    |
| 24       | Adjust curb steel to grade                   | EA.      | 5         | \$494.00                 | \$2,470.00                 | 0.00                        | \$0.00              | 0.00           | \$0.00            |                                       | 0.00                            | \$0.00                                      | 0%          | \$2,470.00                  | \$0.00      |
| 25       | Adjust manhole to grade - type 1             | EA.      | 5         | \$215.00                 | \$1,075.00                 | 4.00                        | \$1,260.00          | 1.00           | \$215.00          |                                       | 5.00                            | \$1,075.00                                  | 100%        | \$0.00                      | \$79.82     |
| 26       | Adjust manhole to grade - type 2             | EA.      | 2         | \$420.00                 | \$840.00                   | 1.00                        | \$420.00            | 1.00           | \$420.00          |                                       | 2.00                            | \$840.00                                    | 100%        | \$0.00                      | \$42.04     |
| 27       | Remove pavement                              | S.Y.     | 7993      | \$11.00                  | \$8,792.30                 | 7,993.00                    | \$8,792.30          | 0.00           | \$0.00            |                                       | 7,993.00                        | \$8,792.30                                  | 100%        | \$0.00                      | \$4,215.25  |
| 28       | Remove driveway                              | S.Y.     | 664       | \$21.00                  | \$13,944.00                | 664.00                      | \$13,944.00         | 0.00           | \$0.00            |                                       | 664.00                          | \$13,944.00                                 | 100%        | \$0.00                      | \$697.79    |
| 29       | Remove sidewalk                              | S.Y.     | 70        | \$21.00                  | \$1,470.00                 | 70.00                       | \$1,470.00          | 0.00           | \$0.00            |                                       | 70.00                           | \$1,470.00                                  | 100%        | \$0.00                      | \$13.56     |
| 30       | Remove storm sewer pipe                      | L.F.     | 1155      | \$12.00                  | \$13,860.00                | 1,155.00                    | \$13,860.00         | 0.00           | \$0.00            |                                       | 1,155.00                        | \$13,860.00                                 | 100%        | \$0.00                      | \$660.59    |
| 31       | Remove lined end section                     | EA.      | 2         | \$238.00                 | \$476.00                   | 2.00                        | \$476.00            | 0.00           | \$0.00            |                                       | 2.00                            | \$476.00                                    | 100%        | \$0.00                      | \$20.82     |
| 32       | Remove and salvage the hydrant               | EA.      | 2         | \$1,265.00               | \$2,530.00                 | 0.00                        | \$0.00              | 0.00           | \$0.00            |                                       | 0.00                            | \$0.00                                      | 0%          | \$2,530.00                  | \$0.00      |
| 33       | Remove fence                                 | L.F.     | 442       | \$6.00                   | \$2,652.00                 | 442.00                      | \$2,652.00          | 0.00           | \$0.00            |                                       | 442.00                          | \$2,652.00                                  | 100%        | \$0.00                      | \$178.85    |
| 34       | Remove tree                                  | EA.      | 3         | \$2,721.00               | \$8,163.00                 | 5.00                        | \$13,650.00         | 0.00           | \$0.00            |                                       | 5.00                            | \$13,650.00                                 | 167%        | \$4,487.00                  | \$683.23    |
| 35       | Remove and install mailbox                   | EA.      | 15        | \$225.00                 | \$3,375.00                 | 15.00                       | \$3,375.00          | 0.00           | \$0.00            |                                       | 15.00                           | \$3,375.00                                  | 67%         | \$1,256.00                  | \$241.54    |
| 36       | Seeding                                      | S.Y.     | 10140     | \$1.71                   | \$17,238.00                | 0.00                        | \$0.00              | 0.00           | \$0.00            |                                       | 0.00                            | \$0.00                                      | 0%          | \$17,238.00                 | \$0.00      |
| 37       | 1/2" sidewalk flag                           | EA.      | 9         | \$287.00                 | \$2,583.00                 | 9.00                        | \$2,583.00          | 0.00           | \$0.00            |                                       | 9.00                            | \$2,583.00                                  | 100%        | \$0.00                      | \$129.56    |
| 38       | Remove control mat, class 10                 | S.Y.     | 3468      | \$2.24                   | \$7,767.12                 | 0.00                        | \$0.00              | 0.00           | \$0.00            |                                       | 0.00                            | \$0.00                                      | 0%          | \$7,767.12                  | \$0.00      |
| 39       | Build Note all fence                         | L.F.     | 721       | \$6.00                   | \$4,326.00                 | 0.00                        | \$0.00              | 0.00           | \$0.00            |                                       | 0.00                            | \$0.00                                      | 0%          | \$4,326.00                  | \$0.00      |
| 40       | Remove clearing and grubbing                 | L.S.     | 1         | \$7,159.00               | \$7,159.00                 | 1.00                        | \$7,159.00          | 0.00           | \$0.00            |                                       | 1.00                            | \$7,159.00                                  | 100%        | \$0.00                      | \$306.25    |
| 41       | Setback                                      | L.S.     | 1         | \$26,347.00              | \$26,347.00                | 1.00                        | \$26,347.00         | 0.00           | \$0.00            |                                       | 1.00                            | \$26,347.00                                 | 100%        | \$0.00                      | \$1,815.98  |
| 42       | Over excavation                              | C.Y.     | 2600      | \$5.00                   | \$13,000.00                | 5,900.00                    | \$29,500.00         | 0.00           | \$0.00            |                                       | 5,900.00                        | \$29,500.00                                 | 100%        | \$0.00                      | \$1,478.25  |
| 43       | Import                                       | C.Y.     | 4100      | \$12.00                  | \$49,200.00                | 4,100.00                    | \$49,200.00         | 0.00           | \$0.00            |                                       | 4,100.00                        | \$49,200.00                                 | 100%        | \$0.00                      | \$2,462.38  |
|          |  |          |           | \$1,864,261.89           |                            |                             | \$1,674,427.58      |                | \$65,233.48       |                                       | \$1,739,729.46                  |   |             | \$64,261.95                 | \$88,862.25 |
| CC01-1   | Wear Strip Type                              | EA.      | 3         | \$15,700.00              | \$47,250.00                | 3.00                        | \$47,250.00         | 0.00           | \$0.00            |                                       | 3.00                            | \$47,250.00                                 | 100%        | \$0.00                      | \$2,364.51  |
| CC01-2   | Wear Restraints                              | EA.      | 4         | \$875.00                 | \$3,500.00                 | 2.40                        | \$2,100.00          | 0.00           | \$0.00            |                                       | 2.40                            | \$2,100.00                                  | 60%         | \$1,400.00                  | \$105.09    |
| CC01-3   | Re-Install Fencing                           | L.S.     | 1         | \$2,000.00               | \$2,000.00                 | 0.00                        | \$0.00              | 0.00           | \$0.00            |                                       | 0.00                            | \$0.00                                      | 0%          | \$2,000.00                  | \$166.14    |
| CC04-1   | Iron Box                                     | EA.      | 1         | \$2,750.00               | \$2,750.00                 | 1.00                        | \$2,750.00          | 0.00           | \$0.00            |                                       | 1.00                            | \$2,750.00                                  | 100%        | \$0.00                      | \$137.82    |
| CC05-1   | Manhole #7, Grades were incorrect            | L.S.     | 1         | \$1,535.00               | \$1,535.00                 | 1.00                        | \$1,535.00          | 0.00           | \$0.00            |                                       | 1.00                            | \$1,535.00                                  | 100%        | \$0.00                      | \$79.82     |
| CC05-2   | Removed 1 Tree                               | L.S.     | 1         | \$650.00                 | \$650.00                   | 1.00                        | \$650.00            | 0.00           | \$0.00            |                                       | 1.00                            | \$650.00                                    | 100%        | \$0.00                      | \$32.53     |

City Council Proceedings  
 June 14, 2023  
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|       |   |      |    |                       |                       |      |                       |             |                    |               |      |                       |            |                    |                    |
|-------|---|------|----|-----------------------|-----------------------|------|-----------------------|-------------|--------------------|---------------|------|-----------------------|------------|--------------------|--------------------|
| CD5-3 | Dig Back #3 to Raise 2' Communication Lines @ 11th St | L.S. | 1  | \$2,455.00            | \$2,455.00            | 1.00 | \$2,455.00            | 0.00        | \$0.00             |               | 1.00 | \$2,455.00            | 100%       | \$0.00             | \$122.85           |
|       | Removed 2'x4' Concrete Over 12" Water Line            | L.S. | 1  | \$1,250.00            | \$1,250.00            | 1.00 | \$1,250.00            | 0.00        | \$0.00             |               | 1.00 | \$1,250.00            | 100%       | \$0.00             | \$62.55            |
|       | Excavate #3 Off Pipe                                  | L.S. | 1  | \$550.00              | \$550.00              | 1.00 | \$550.00              | 0.00        | \$0.00             |               | 1.00 | \$550.00              | 100%       | \$0.00             | \$27.52            |
|       | Removed #37 Concrete Over Sewer Line @ 7th & 8th      | L.S. | 1  | \$775.00              | \$775.00              | 1.00 | \$775.00              | 0.00        | \$0.00             |               | 1.00 | \$775.00              | 100%       | \$0.00             | \$38.78            |
| CD5-4 | Lowered Electric Line                                 | L.S. | 1  | \$5,980.00            | \$5,980.00            | 1.00 | \$5,980.00            | 0.00        | \$0.00             |               | 1.00 | \$5,980.00            | 100%       | \$0.00             | \$294.24           |
|       | Wiped David City Lower 2" Water Line & Install 8"     | L.S. | 1  | \$10,700.00           | \$10,700.00           | 1.00 | \$10,700.00           | 0.00        | \$0.00             |               | 1.00 | \$10,700.00           | 100%       | \$0.00             | \$535.45           |
|       | Water Line  | L.S. | 1  | \$8,050.00            | \$8,050.00            | 1.00 | \$8,050.00            | 1.00        | \$8,050.00         |               | 1.00 | \$8,050.00            | 100%       | \$0.00             | \$402.84           |
|       | F. Views to Run 120 LF of Pipe, Release Fiber &       | L.S. | 1  | \$1,700.00            | \$1,700.00            | 0.00 | \$0.00                | 0.00        | \$0.00             |               | 0.00 | \$0.00                | 0%         | \$0.00             | \$0.00             |
| CD5-5 | Install 1" Regulator/Swelling Joint                   | L.S. | 2  | \$1,200.00            | \$1,200.00            | 0.00 | \$0.00                | 0.00        | \$0.00             |               | 0.00 | \$0.00                | 0%         | \$176.00           | \$0.00             |
| CD5-6 | Remove Storm Sewer Pipe                               | L.S. | 11 | \$15.00               | \$165.00              | 0.00 | \$0.00                | 0.00        | \$0.00             |               | 0.00 | \$0.00                | 0%         | \$165.00           | \$0.00             |
| CD5-7 | Install 12" Storm Sewer Pipe                          | L.S. | 2  | \$200.00              | \$200.00              | 0.00 | \$0.00                | 0.00        | \$0.00             |               | 0.00 | \$0.00                | 0%         | \$200.00           | \$0.00             |
|       | <b>Contract Total</b>                                 |      |    | <b>\$1,838,622.00</b> | <b>\$1,838,622.00</b> |      | <b>\$1,733,482.50</b> | <b>0.00</b> | <b>\$95,139.50</b> | <b>\$0.00</b> |      | <b>\$1,848,622.00</b> | <b>95%</b> | <b>\$91,737.75</b> | <b>\$62,677.75</b> |

|   |                       |             |
|---|-----------------------|-------------|
| Original Contract                                 | \$1,848,624.00        |             |
| + CD 1  | \$0.00                |             |
| + CD 2  | \$47,250.00           |             |
| + CD 3  | \$6,750.00            |             |
| + CD 4  | \$0.00                |             |
| + CD 5  | \$22,412.00           |             |
| + CD 6  | \$8,050.00            |             |
| + CD 7  | \$3,258.00            |             |
| <b>Total Contract to Date</b>                     | <b>\$1,936,344.00</b> |             |
| Total Work Completed to Date                      | \$1,848,624.00        |             |
| Total Materials Stored to Date                    | \$0.00                |             |
| <b>Total Value Completed &amp; Stored to Date</b> | <b>\$1,848,624.00</b> |             |
| - Retainage                                       | 5%                    | \$92,421.70 |
| <b>Net Total Due Less Retainage</b>               | <b>\$1,756,202.30</b> |             |
| - Pay AP 1  | \$6,094.80            |             |
| - Pay AP 2  | \$189,675.60          |             |
| - Pay AP 3  | \$119,422.09          |             |
| - Pay AP 4  | \$79,720.20           |             |
| - Pay AP 5  | \$543,607.23          |             |
| - Pay AP 6  | \$443,769.80          |             |
| - Pay AP 7  | \$25,481.00           |             |
| - Pay AP 8  | \$16,945.81           |             |
| - Pay AP 9  | \$215,683.75          |             |
| <b>Total Payments</b>                             | <b>\$1,687,105.28</b> |             |
| <b>Net Amount Due This Estimate</b>               | <b>\$69,097.02</b>    |             |

**Estimate**  
 10 Item 8 - Quantity updated from 8.55 to 7.55 per Change Order #1





P.O. Box 83 - 980 East 25th Street - Wahoo, NE 68066  
 Phone #: (402) 443-3663 Fax #: (402) 443-5013

## PROGRESS ESTIMATE

Date: 16-May-23

Project: MUNICIPAL PAVING IMPR DAVID CITY

Collins Project No: 222630

To: City of David City

Contractor Estimate No.: 10

Attn: Olsson - Dave Ziska

Original Contract Amount: \$ 1,848,434.00

| Item | Description                                | Contract Qty |     | Qty To Date | Unit Price   | Amount        |
|------|--|--------------|-----|-------------|--------------|---------------|
| 1    | MOBILIZATION/DEMobilIZATION                | 1.00         | LS  | 1.00        | \$ 92,857.00 | \$ 92,857.00  |
| 2    | BUILD 8" CONCRETE PAVEMENT W/INTEGRAL CURB | 12,166.00    | SY  | 12,175.00   | \$ 73.00     | \$ 888,775.00 |
| 3    | BUILD 6" CONCRETE DRIVEWAY                 | 801.00       | SY  | 789.50      | \$ 71.00     | \$ 56,054.50  |
| 4    | BUILD 4" CONCRETE SIDEWALK                 | 1,370.00     | SY  | 1,002.00    | \$ 57.00     | \$ 57,114.00  |
| 5    | BUILD CONCRETE OUTFALL                     | 104.00       | SY  | 0.00        | \$ 67.00     | \$ -          |
| 6    | DETECTABLE WARNING PANEL                   | 180.00       | SF  | 72.00       | \$ 51.00     | \$ 3,672.00   |
| 7    | BUILD 3" CRUSHED ROCK DRIVEWAY             | 34.40        | TON | 34.40       | \$ 61.00     | \$ 2,098.40   |
| 8    | BUILD AREA INLET (quantity change only)    | 7.00         | EA  | 7.00        | \$ 3,933.00  | \$ 27,531.00  |
| 9    | BUILD CURB INLET                           | 8.00         | EA  | 8.00        | \$ 5,892.00  | \$ 47,136.00  |
| 10   | BUILD STORM SEWER MANHOLE                  | 11.00        | EA  | 11.00       | \$ 6,639.00  | \$ 73,029.00  |
| 11   | BUILD CONCRETE COLLAR                      | 1.00         | EA  | 1.00        | \$ 3,976.00  | \$ 3,976.00   |
| 12   | BUILD 18" FES                              | 2.00         | EA  | 1.00        | \$ 1,234.00  | \$ 1,234.00   |
| 13   | BUILD 24" RE FES                           | 13.00        | EA  | 14.00       | \$ 1,423.00  | \$ 19,922.00  |
| 14   | BUILD STORM SEWER TAP                      | 1.00         | EA  | 1.00        | \$ 4,104.00  | \$ 4,104.00   |
| 15   | INSTALL 15" STORM SEWER PIPE               | 459.00       | LF  | 459.00      | \$ 64.00     | \$ 29,376.00  |
| 16   | INSTALL 18" STORM SEWER PIPE               | 2,293.00     | LF  | 2,293.00    | \$ 67.00     | \$ 153,631.00 |
| 17   | INSTALL 24" RE STORM SEWER PIPE            | 190.00       | LF  | 206.00      | \$ 133.00    | \$ 27,398.00  |
| 18   | BUILD FIRE HYDRANT ASSEMBLY                | 2.00         | EA  | 0.00        | \$ 7,799.00  | \$ -          |
| 19   | RECONSTRUCT 1" WATER SERVICES              | 1.00         | EA  | 0.00        | \$ 285.00    | \$ -          |
| 20   | 12" WATER MAIN LOWERING                    | 1.00         | EA  | 0.00        | \$ 7,692.00  | \$ -          |
| 21   | 4" WATER MAIN LOWERING                     | 1.00         | EA  | 1.00        | \$ 3,479.00  | \$ 3,479.00   |
| 22   | ADJUST FIRE HYDRANT TO GRADE               | 2.00         | EA  | 0.00        | \$ 1,122.00  | \$ -          |
| 23   | ADJUST VALVE TO GRADE                      | 7.00         | EA  | 7.00        | \$ 432.00    | \$ 3,024.00   |
| 24   | ADJUST CURB STOP TO GRADE                  | 5.00         | EA  | 0.00        | \$ 484.00    | \$ -          |
| 25   | ADJUST MANHOLE TO GRADE - TYPE 1           | 5.00         | EA  | 5.00        | \$ 315.00    | \$ 1,575.00   |
| 26   | ADJUST MANHOLE TO GRADE - TYPE 2           | 2.00         | EA  | 2.00        | \$ 420.00    | \$ 840.00     |
| 27   | REMOVE PAVEMENT                            | 7,663.00     | SY  | 7,663.00    | \$ 11.00     | \$ 84,293.00  |
| 28   | REMOVE DRIVEWAY                            | 664.00       | SY  | 664.00      | \$ 21.00     | \$ 13,944.00  |
| 29   | REMOVE SIDEWALK                            | 70.00        | SY  | 70.00       | \$ 21.00     | \$ 1,470.00   |
| 30   | REMOVE STORM SEWER PIPE                    | 1,155.00     | LF  | 1,155.00    | \$ 12.00     | \$ 13,860.00  |

|  |           |    |          |              |              |
|--|-----------|----|----------|--------------|--------------|
| 31 REMOVE FES                              | 2.00      | EA | 2.00     | \$ 308.00    | \$ 616.00    |
| 32 REMOVE & SALVAGE FIRE HYDRANT           | 2.00      | EA | 0.00     | \$ 1,283.00  | \$ -         |
| 33 REMOVE FENCE                            | 442.00    | LF | 442.00   | \$ 8.00      | \$ 3,536.00  |
| 34 REMOVE TREE                             | 3.00      | EA | 5.00     | \$ 2,731.00  | \$ 13,655.00 |
| 35 REMOVE & RESET MAILBOX                  | 15.00     | EA | 13.00    | \$ 525.00    | \$ 6,825.00  |
| 36 SEEDING                                 | 10,140.00 | SY | 0.00     | \$ 1.70      | \$ -         |
| 37 INLET SEDIMENT FILTER                   | 9.00      | EA | 9.00     | \$ 281.00    | \$ 2,529.00  |
| 38 EROSION CONTROL MAT, CLASS 1D           | 2,468.00  | SY | 0.00     | \$ 2.20      | \$ -         |
| 39 BUILD FABRIC SILT FENCE                 | 731.00    | LF | 0.00     | \$ 6.00      | \$ -         |
| 40 GENERAL CLEARING & GRUBBING             | 1.00      | LS | 1.00     | \$ 7,159.00  | \$ 7,159.00  |
| 41 EARTHWORK                               | 1.00      | LS | 1.00     | \$ 36,347.00 | \$ 36,347.00 |
| 42 OVER-EXCAVATION                         | 5,900.00  | CY | 5,900.00 | \$ 5.00      | \$ 29,500.00 |
| 43 IMPORT                                  | 4,100.00  | CY | 4,100.00 | \$ 12.00     | \$ 49,200.00 |
| CO#2 3 WATER MAIN TAPS                     | 3.00      | EA | 3.00     | \$ 15,750.00 | \$ 47,250.00 |
| CO#3 WATER RESTRAINTS & FENCE INSTALLATION | 1.00      | LS | 0.60     | \$ 9,100.00  | \$ 5,460.00  |
| CO#5 CHANGE ORDER #5 ADJUSTMENTS           | 1.00      | LS | 1.00     | \$ 26,345.00 | \$ 26,345.00 |
| CO#6 CHANGE ORDER #6 SIDEWALK ADJUSTMENTS  | 1.00      | LS | 1.00     | \$ 8,050.00  | \$ 8,050.00  |

|                                    |               |                                 |     |                 |
|------------------------------------|---------------|---------------------------------|-----|-----------------|
| <i>Previous Requested Amounts:</i> |               | <b>TOTAL EARNED TO DATE:</b>    |     | \$ 1,846,864.90 |
| Estimate #1:                       | \$ 9,064.80   | Retainage                       | 10% | \$ (92,421.70)  |
| Estimate #2:                       | \$ 189,875.93 | Other Deductions                |     | \$ -            |
| Estimate #3:                       | \$ 116,932.09 | <b>NET ESTIMATE TO DATE:</b>    |     | \$ 1,754,443.20 |
| Estimate #4:                       | \$ 79,720.20  | Less Previous Requests:         |     | \$ 1,661,060.80 |
| Estimate #5:                       | \$ 543,937.23 | <b>TOTAL DUE THIS ESTIMATE:</b> |     | \$ 93,382.40    |
| Estimate #6:                       | \$ 443,793.80 |                                 |     |                 |
| Estimate #7:                       | \$ 35,461.00  |                                 |     |                 |
| Estimate #8:                       | \$ 26,345.00  |                                 |     |                 |
| Estimate #8:                       | \$ 215,930.75 |                                 |     |                 |

Estimate Prepared by :



Christopher Woodward

16-May-23

Council member Bruce Meysenburg made a motion to pass and adopt Resolution No. 22-2023 authorizing the execution and enforcement of that certain matching funds grant agreement with the David City Development Corporation. Council Member Keith Marvin seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

**RESOLUTION NO. 22-2023**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF  
THE CITY OF DAVID CITY, NEBRASKA, AUTHORIZING THE  
EXECUTION AND ENFORCEMENT OF THAT CERTAIN MATCHING FUNDS  
GRANT AGREEMENT WITH THE DAVID CITY DEVELOPMENT  
CORPORATION.**

**WHEREAS**, the City of David City, Nebraska (the “City”) holds certain discretionary funds in its General Fund; and

**WHEREAS**, among other purposes, the City may spend such funds, or make grants to others to spend such funds, to create workforce housing; and

**WHEREAS**, the City finds that workforce housing is a pressing need in David City and without available housing, David City is hindered in its ability to grow, attract business and increase its property tax revenues; and

**WHEREAS**, the City finds that it is most efficient and effective to grant certain funds to the David City Development Corporation (the “Recipient”) for this purpose because that entity can obtain other grants and raise other funds, with which it can use funds from the City to match grants as necessary and to leverage other funds; and

**WHEREAS**, the City finds that it is prudent and in compliance with applicable law to disburse these funds pursuant to the attached Grant Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY:**

Section 1. The foregoing recitals are true and correct, and are hereby incorporated as if set forth, in full, below.

Section 2. The Mayor and City Council of the City of David City, Nebraska, hereby authorize the Mayor to execute and enforce that certain Grant Agreement attached hereto as Exhibit A and incorporated herein.

Section 3. The Mayor and City Council of the City of David City, Nebraska, hereby authorize the Mayor or her designee to execute any documents, instruments, agreements or certifications relating to such matters contained in this Resolution, and the execution and delivery of the same by the Mayor or her designee shall conclusively establish their authority with respect thereto and the authorization and approval thereof.

INTRODUCED BY COUNCIL MEMBER \_\_\_\_\_

PASSED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2023.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

**EXHIBIT A**

Grant Agreement

**CITY OF DAVID CITY, NEBRASKA  
MATCHING FUNDS GRANT AGREEMENT  
WITH THE DAVID CITY DEVELOPMENT CORPORATION**

Amount: \$500,000

June 14, 2023

For good and valuable consideration, the receipt and sufficiency of which the parties acknowledge and accept, the City of David City, Nebraska (the “**City**”) hereby grants and conveys to the David City Development Corporation, a Nebraska nonprofit corporation, (the “**Grantee**”), subject to any costs of City associated with making the Grant (as defined below), the principal sum of five-hundred thousand dollars (\$500,000) in accordance with this Agreement (the “**Grant**”).

This Grant is being entered into in furtherance of that certain “Workforce Housing Development Plan” dated June 14, 2023 (the “**Development Plan**”). A copy of the Development Plan is attached hereto as Exhibit A. The City shall fund this Grant in the manner set forth in Resolution No. 22-2023 (the “**Grant Resolution**”). The Grant Resolution is hereby incorporated by this reference as if fully set forth herein. The principle sum comes from money in the City’s General Fund. Recipient shall comply with all requests of the City for reports on the use of the funds and any actions.

Recipient has represented to the City that Recipient will use the Grant as matching funds to qualify for a grant from the Nebraska Department of Economic Development and ultimately to construct workforce housing in the City of David City consistent with the Development Plan. Workforce housing for this purpose generally means housing affordable to persons or families earning 120 percent or less of the Area Median Income.

Recipient shall perform all requirements of this Agreement in a manner satisfactory to the City. Recipient acknowledges and agrees that, should Recipient not comply with this Agreement, including, but not limited to carrying out the Development Plan, the City shall have all rights and remedies available to it at law and in equity to collect the Grant amount and costs as necessary and authorized to comply with applicable law.

**CITY:**

\_\_\_\_\_  
Mayor Jessica Miller

**ATTEST:**

\_\_\_\_\_  
City Clerk

**RECIPIENT:**

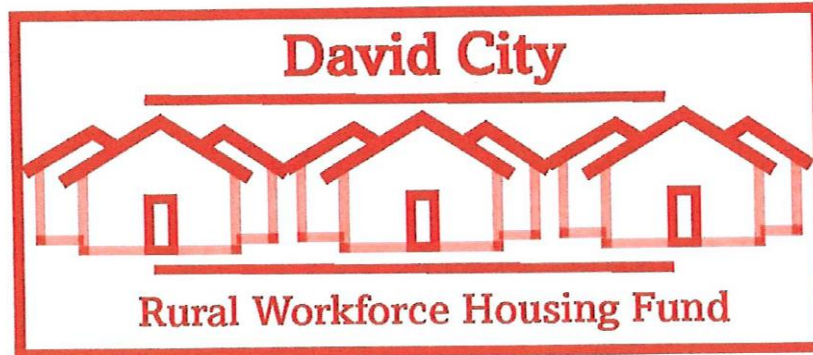
BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**EXHIBIT A**

**WORKFORCE HOUSING DEVELOPMENT PLAN**



**FUND INVESTMENT PLAN**

**For**

**DAVID CITY DEVELOPMENT CORPORATION  
RURAL WORKFORCE HOUSING FUND**

**Adopted on  
March 17, 2023**

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## DAVID CITY RURAL WORKFORCE HOUSING FUND

### FUND INVESTMENT PLAN

Administered by:  
David City Development Corporation  
A 501(c)3 Non-Profit Organization

#### A. PURPOSE

The Nebraska Rural Workforce Housing Fund (RWHF) Act was approved by the Governor on April 27, 2017. In 2017, the Act authorized a one-time transfer of funds from the Nebraska Affordable Housing Trust Fund to the RWHF. In 2020 the Nebraska Legislature once again approved funds. In 2022, the Nebraska legislature allocated additional funds to allow for another competitive application cycle. All cycles are administered by the Nebraska Department of Economic Development (DED). The fund is a resource to support the creation of rural workforce housing investment funds to encourage the development of workforce housing in Nebraska's rural and underserved regions.

Prioritization for the funds is based on a demonstrated and ongoing housing need, low unemployment rate, difficulty filling an employment position, demonstrated a commitment to growing housing stock, projects reasonably ready for occupancy in a period of 24 months, and the capacity to manage a workforce in rural Nebraska. The workforce housing funds are intended to revolve and allow for reinvestment in workforce housing projects into the future.

DED's role in the RWHF is as an investor and a partner. As an investor, DED would provide a grant to the David City Development Corporation (DCDC) for the creation of a David City RWHF for the City of David City to fund rural workforce housing projects that will provide the best investments of state resources to promote the development of workforce housing. As a partner, DED is interested in providing input as early as possible in fund development or project design. The department will work closely with the DCDC to address any obstacles encountered during fund development, project development, or implementation.

The DCDC is the Applicant and Administrator of the David City RWHF. The controlling body of the DCDC is the Board of Directors. The DCDC has contracted with a third party as a fund manager to the David City RWHF. Throughout this plan the term "Administrator" refers to the

DCDC, "Fund Manager" is the third party, and "Board or Board of Directors" is the oversight body of the DCDC.

**B. SOURCE OF FUNDS**

The Board of Directors of the DCDC adopted a Resolution, to be the applicant for the David City RWHF. Upon award of the grant, DCDC will be the Fund Administrator for this fund.

The City of David City has provided a cash contribution of \$500,000 to create this housing fund. The source of these funds is from David City's General Fund.

The combined cash contribution of \$500,000 allowed a grant request of \$1,000,000 to provide resources to the David City RWHF in the amount of \$1,500,000.

**C. GEOGRAPHIC SERVICE AREA**

The geographic service area that the David City RWHF can be used is within the city limits of David City and the 1-mile jurisdiction established by the City of David City. Any developer/builder seeking RWHF outside of this area is not eligible to access the David City RWHF.

**D. ELIGIBLE ACTIVITIES**

The development of the David City RWHF is for the development of workforce housing projects in David City. The intent of the workforce housing investment funds is long range, continual investment in workforce housing projects. The funds are intended to perpetuate.

The eligible activities include:

- New construction of owner-occupied or non-owner occupied rental housing.
- Substantial repair or rehabilitation of dilapidated housing stock, for which the cost to rehabilitate exceeds fifty percent (50%) of the unit's assessed value.
- Upper story housing development.
- Rehabilitation that includes the conversion of an existing building into housing.

Infrastructure development associated with workforce housing is an eligible use of RWHF in association with the above eligible activities, proportionate to the number of workforce housing units and subject to the RWHF price limits. The maximum value limits as set by NDED are listed in Attachment #1.

The David City RWHF housing projects may not receive National Housing Trust Funds, Federal Low-Income Housing Tax Credits, State Low-Income Housing Tax Credits, Community Development Block Grants, HOME funds or Nebraska Affordable Housing Trust Funds.

**E. QUALIFIED ACTIVITIES**

David City RWHF qualifies activities to include, but not limited to:

- Purchase and rental guarantees
- Loan guarantees
- Loan participations
- Other credit enhancements or any form of assistance designed to reduce the cost of workforce housing related to the eligible activities of the non-profit development organization
- Forgivable loans and grants are allowed with RWHF; however, financing structures that provide RWHF to revolve in the rural workforce investment funds are preferred
- Down Payment Assistance (DPA)

**F. INELIGIBLE ACTIVITIES**

Any activity not specifically authorized under Eligible & Qualified Activities is ineligible to be carried out with the David City RWHF funds.

This section further identifies ineligible activities:

- Furnishings and personal property not an integral structural fixture including the purchase of equipment, fixtures, and motor vehicles
- Mobile homes, as defined by DED; *Mobile homes means a movable or portable dwelling constructed to be towed on its own chassis, connected to utilities, and designed with or without a permanent foundation for year-round living. It may consist of one or more units that can be telescoped when towed and expanded later for additional capacity, or of two or more units, separately towable but designed to be joined into one integral unit*
- Housing that receives National Housing Trust Funds, Federal Low-Income Housing Tax Credits, Nebraska Affordable Housing Tax Credits, Community Development Block Grants, HOME Investment Partnerships Program (HOME) funds or funds from the Nebraska Affordable Housing Trust Funds
- Housing Administration costs
- Grant Administration costs

Grant Administration and Housing Administration costs for the David City RWHF at the project level can be supported with local matching funds, fees, loan repayments, interest, and other funds, or as a last resort these costs may be paid from the local cash match portion of the David City RWHF.

**G. ELIGIBLE APPLICANT ENTITIES**

There are a variety of entities that can apply and obtain funding from the David City RWHF.

The eligible entities are:

- Individual(s) for Down Payment Assistance
- Sole Proprietorship
- "S" Corporation
- "C" Corporation
- General Partnership
- Limited Partnership
- Limited Liability Company

**H. TYPES, AMOUNTS AND TERMS OF ASSISTANCE**

The right is reserved to negotiate the terms and conditions of the financial assistance with each applicant. Terms and conditions may vary from applicant to applicant.

**1. Interest Rate:**

Interest rates for the term of the loan will be fixed at the time of loan closing.

The interest rate on new loans will be adjusted to market conditions over the life of the David City RWHF.

**2. Loan Amount:**

**a. Housing Development:**

- i. Minimum suggested loan for Developers/Builders is \$50,000.
- ii. Maximum loan amounts to be determined based on the percentage of the total project. Therefore, loan applications will need to include a project budget which includes all costs of the project.
- iii. Each loan requires the borrower to provide their own equity into the housing project. At least 20% of the project will require private or outside sources. The applicant's equity in the project can be cash or the value of the land in which the project will be located. Value of the land will be equal to the purchase price of land if acquired less than 3 years from the application date. If the land purchase was greater than 3 years from the

DCDC Fund Investment Plan (Adopted 03/17/2023)

application date; then the value of the land will be based on the county assessed value or an appraised value required by the Lender.

- iv. The Combined Loan to Value (CLTV) including the David City RWHF loan cannot exceed 80% of all total costs of the housing project.

**b. Down Payment Assistance:**

- i. Minimum loan for Down Payment Assistance is \$5,000.
- ii. Maximum loan amounts to be determined based on the percentage of the total project. Maximum suggested loan for Down Payment Assistance is \$20,000 and a suggested maximum of \$100,000 in RWHF to be outstanding for DPA Loans at any given time.
- iii. Each loan requires the borrower to provide their own equity into the housing project.
- iv. The Combined Loan to Value (CLTV) including the David City RWHF loan cannot exceed 105% of all total CLTV of the purchase or appraisal value, whichever is less.

**3. Loan Term**

Loan terms vary according to the type of housing development. The preferred terms for financing are listed below. However, additional or different loan terms can be negotiated by Applicant and DCDC Board of Directors based on the size of the project and other conditions.

- a. Multi-Family Rental Development  
Up to twenty-four (24) months
- b. Single-Family, Owner Occupied and Rental Development  
Up to twenty-four (24) months
- c. Substantial Repair or Rehabilitation of Dilapidated Housing Stock  
Up to twenty-four (24) months
- d. Upper Story Housing Development  
Up to twenty-four (24) months

- e. Rehabilitation, Converting Existing Building into Housing  
Up to twenty-four (24) months
- f. Down Payment Assistance loans  
Are due in-full upon the sale or transfer of ownership of the property.

**4. Security**

Security for loans may include, but not limited to, Promissory Notes, a Deed of Trust, Performance Bonds, UCC filings and personal and/or corporate guarantees as appropriate and may be in a subordinate position to the primary commercial lender.

**5. Development Performance**

Upon disbursement of the initial funds, housing projects must be reasonably ready for occupancy in a period of 24 months from the date of loan closing.

Failure to obtain reasonably ready for occupancy as indicated in the Loan Agreement at the time of the loan closing shall result in the immediate repayment of the entire David City RWHF loan according to the terms in the Promissory Note.

The guideline for a housing project being reasonably ready for occupancy varies depending on the type of project. Information will be obtained from the applicant during the application process for the initial use of the David City RWHF. At the time of loan approval, the Fund Administrator will determine what the level of reasonably ready for occupancy is expected and discussed based upon the scope and magnitude of the project.

**I. FEES AND CHARGES**

Modest application fees and closing cost fees will be charged to the applicant of the David City RWHF.

**1. Application Fee**

The applicant agrees to pay a non-refundable Application Fee of \$250.00 to cover the cost of out-of-pocket expenses incurred in researching, preparing, and submitting the loan application for review and approval. This fee is due and payable to the Fund Administrator at the time of submitting the application. There will be no application fee for Down Payment Assistance Applicants.

**2. Closing Fees**

The borrower agrees to pay a Closing Fee of 1% of the loan amount, not to exceed \$1,000.00 to cover costs of closing the loan and preparing loan closing documents. The borrower agrees to pay in addition to the Closing Fee, all related transaction fees, including, but not limited to, all cost of title insurance, recording fees, survey costs, inspections, environmental assessment, 3<sup>rd</sup> party loan document preparation fees, and legal fees.

Down Payment Assistance Closing Fee to be \$150.00 to cover costs of closing the loan and preparing loan closing documents. The borrower agrees to pay in addition to the Closing Fee, all related transaction fees, including, but not limited to, all cost of title insurance, recording fees, survey costs, inspections, environmental assessment, 3<sup>rd</sup> party loan document preparation fees, and legal fees.

**J. APPLICATION PROCESS**

Once the David City RWHF is established a Public Notice will be posted in the David City, City offices. A timeline identifying the dates applications will be accepted will be included in the notices.

The applicant must complete the application forms included in the application packet and submit a complete packet.

A detailed Financing Application document will be separate from this Fund Investment Plan.

The applicant must submit all items requested in the Financing Application, such items as listed below, but not limited to:

- Project Summary
- Sources and Uses of Funds
- Proforma – projection of cash flow for the project
- List of what funds are going to be used
- Personal tax returns of the applicant (20% or more ownership) for the past two years
- Business tax returns for the past three years, profit/loss statements/balance sheet of the business (if existing)
- Bank Pre-Approval Letter
- Letters of commitment from other funding sources
- Credit Report from a Credit Reporting Agency
- Site plan of housing development

- Housing plans of proposed housing project
- Environmental information as required by each funding source
- Attestation Form
- Credit History Authorization

The Fund Administrator and/or Fund Manager will be responsible for coordinating meetings, communicating with the applicant/borrower about projects and the overall management of the fund in terms of applications, closings, and project management as it relates to the David City RWHF.

DCDC Board of Directors and Fund Manager shall keep confidential all information that is provided to them that is reasonably clear to be confidential or sensitive in nature even when the information affects an activity of the DCDC Board of Directors.

**K. APPROVAL PROCESS**

The DCDC Board of Directors will be responsible for reviewing loan request, approving, or denying requests.

At least one of the DCDC Board of Directors shall have commercial lending or financing experience. The remaining members can be housing advocates in the city of David City. A Fund Manager representative may be in attendance of all meetings for record keeping purposes.

The structure of the DCDC Board of Directors and their attendance at the meetings are critical to the success of the David City RWHF. The DCDC Board of Directors will meet on an "as needed" basis. The DCDC Board of Directors may conduct its review during a face-to-face meeting, by mail, e-mail or using a telephone conference call. A quorum of the DCDC Board of Directors members is required to meet and approve/deny loan requests. Also, a simple majority of the entire DCDC Board of Directors is needed to make a recommendation. A loan will not be recommended without the commercial lender or financing experience members' input.

The DCDC Board of Directors shall perform the following functions:

**1. For Approval:**

- Assess and analyze, recommend approval or denial of loan requests or foreclosure proceedings (in the event of default) brought to the DCDC Board of Directors
- Assess and approve or deny loan extensions and modification requests
- Assist in the refinement of loan underwriting and portfolio management policies



**2. For Review and Comment:**

- Review portfolio compliance with exposure limits, actions taken on loans with significant delinquencies, loan maturities, and actions taken on watch list loans
- Review additional reports as provided
- Initiate discussions on new loan products needed or other new opportunities
- Undertake other related activities as the DCDC Board of Directors may request

It is not the intent of the fund to compete with traditional lenders, but rather partner with them whenever possible. Therefore, the DCDC Board of Directors will rely on the participating Lender's expertise and experience to determine the amount of funding needed to fill "the gap". A letter of intent of financing for the housing project from a lender is required to be included in an application under this fund.

**3. Scoring/Selection Criteria**

The DCDC Board of Directors shall score each application according to the following criteria, but not limited to:

- Eligibility under the David City RWHF
- Housing project's beneficial impact to the City of David City
- Soundness and creditability of the housing proposal
- Eligible activities of the project to be funded
- Track record, credibility, and credit worthiness of applicant
- Ability to leverage private financing

A detailed Project Selection Scoring Worksheet and Review Criteria document will be separate from this Fund Investment Plan.

**L. ADMINISTRATION OF FUND**

**1. Loan Review Process and Procedures**

Upon submission, the application will be reviewed for technical adherence to the guidelines of the David City RWHF. Should the application be deficient the applicant will be contacted for additional information. Additional information must be obtained within 30 days of the request. If not received within 30 days of the request, the application will be put into the "Incomplete Applications" file. Once it has been determined the application is complete, a loan write up will be prepared and submitted to the DCDC Board of Directors for review and funding recommendation or denial, utilizing the Project Selection Scoring Worksheet and Review Criteria. It is the intent of the DCDC Board of Directors to review all applications within 30 days of the application determined to be completed. Rate, terms and collateral and equity requirements will be finalized as negotiated between the applicant and the DCDC Board of Directors.

DCDC Fund Investment Plan (Adopted 03/17/2023)

After approval or denial by the DCDC Board of Directors, the applicant will be immediately notified by phone, email or in writing.

## **2. Loan Closing Process and Procedures**

The Fund Administrator or the Fund Manager will prepare all necessary documents to complete the approved funding request. Standard loan closing documents may include, but not limited to:

- Promissory Note
- Loan Agreement
- Security Agreement
- Deed of Trust
- Financing Statement
- Personal Guaranty
- Automated Clearing Housing (ACH) Form
- Title/Lien Search
- Mechanic's Lien Protection
- Notice of Commencement

Loan Proceeds will be disbursed to the borrower in accordance with the Fund Administrator's standard practices and after construction progress inspections. Projects authorized for pre-construction costs may receive disbursement in advance of any construction activities. The Fund Administrator or the Fund Manager will be responsible for timely construction inspections and will provide copies of the inspections to the borrower upon request.

Closing fees will be applicable as identified in Section I.

Title Companies may be used to pay out loan proceeds based upon inspections and collect lien waivers.

## **3. Subordination**

Some projects require special financing techniques to meet a borrower's needs. Recognizing that, a subordinate position to other lenders of record at the time of the project may be taken. If a subordinate position is required, additional considerations will be taken so as not to jeopardize the loan portfolio. All fees associated with subordination will be the borrower's responsibility. Other special financing techniques may include quarterly or semiannual payments, interest only payments during a designated time, or some other method agreed upon by the DCDC Board of Directors.

#### 4. Loan Servicing

##### a. File Management

A separate file will be maintained for each loan applicant and borrower. Each file will contain all documents and correspondence and be kept in a filing cabinet. In addition to an electronic file will be maintained. The file will include all application documents, insurance forms, general correspondence, financial statements, site visit reports and other documents related to the application and loan.

##### b. Loan Payments

A loan repayment schedule providing for monthly, quarterly, semi-annual, or annual payments will be provided in conjunction with project approval. Repayments shall be deposited in the David City RWHF program for future projects as approved.

Fund Administrator and/or the Fund Manager will monitor each loan by requiring periodic reports/updates, conducting regular site visits to the project site. If evidence of requested updates and/or documents are not received within 60 days as requested by written communication, a monthly assessment of no less than \$50.00 will be assessed to the borrower.

If payments are not honored by a financial institution due to Non-Sufficient Funds or Stop Payment, Fund Administrator and/or the Fund Manager will document the contact made with the borrower (either by phone or letter) – notifying the borrower of the NSF charge and payment must be to the fund administrators office within 10 business days. A \$50.00 NSF charge will be assessed to the borrower.

##### c. Late Payments

In the event of a late payment on loans over 60 days in arrears, Fund Administrators, Fund Managers and/or legal counsel will attempt to establish a workout arrangement with the borrower. Every effort will be made to assist the borrower while protecting the David City RWHF as well. All action taken on any given loan will be documented in the regular reports DCDC Board of Directors.

The terms and procedures in the event payments are not made by the due date are detailed in the Promissory Note and Deed of Trust.

Write-offs or charge-offs do not release borrowers from their obligations under the terms of the project's loan documents. Borrowers are expected to pay the full amount of principal, interest, late fees, and collection costs to which the Fund Administrator is entitled, adjusted in accordance with any loan modification, restructurings or forgiveness which are recommended and approved by the DCDC Board of Directors.

**5. Extending, Modifying, and Forgiving Loans; Foreclosure**

**a. Loan Extensions**

An extension is defined as a change ONLY to the maturity date of a loan, when:

- a repayment source is identified and likely but not yet committed or received
- or when the project timeline is extended but the development plan, process, and budget remain the same

Loan Extension shall require approval of the DCDC Board of Directors

**b. Loan Modification**

Complete underwriting of the loan must be performed, if:

- A project requires additional extensions beyond 12 months
- The development plan has changed substantially
- The development budget has changed substantially
- The repayment source has change substantially
- The loan requires a reduction in rate and/or payment, or
- There has been a substantial change in the organizational financial conditions, status, or leadership

Modification of loans shall require approval of the DCDC Board of Directors.

**c. Loan Forgiveness**

Partial or full loan forgiveness shall require the approval of the DCDC Board of Directors.

**d. Foreclosure/Deed of Trust, Trustee Power of Sale**

Foreclosure/Deed of Trust, Trustee Power of Sale Proceeding is the last option to collect defaulted secured loans. However, it may be the only option to remedy a deteriorating situation and/or recover a portion, if not all, of a loan repayment. It will be pursued only after the DCDC Board of Directors has exhausted all other reasonable remedies.

Foreclosure/Deed of Trust, Trustee Power of Sale can only take place upon the decision of the DCDC Board of Directors.

If Foreclosure/Deed of Trust, Trustee Power of Sale happens, the proceeds will be disbursed in accordance with applicable laws and preferably as follows:

- Collection costs (including, but not limited to, appraisals, legal costs, expenses for stabilizing the property)
- Loan amounts owed to senior lenders if any
- Principal owed to the Fund Administrator

- Interest owed to the Fund Administrator
- Fund Administrator staff time and costs including travel and consultants
- If proceeds are more than costs listed above they are paid to the Borrower.

#### **6. Monitoring**

The monitoring of all outstanding loans of the David City RWHF will be conducted in various ways. Detailed reports will be prepared to include current RWHF balance as well as outstanding loans.

Periodic reports will be prepared for the David City RWHF. These reports will identify each borrower, the status of payments, outstanding loan balance, the maturity date of the loan, applications in the pipeline as well as any funds on hand. The reports will be presented to the DCDC Board of Directors. If payments are not received by the due date, the DCDC Board of Directors will be informed. The financial data will be tracked using an accounting software as well as Excel spreadsheets.

In addition, a report will be prepared of any potential applicants on a pending application list if funds are not available to fulfill additional loan requests. This will keep the local members of the DCDC Board of Directors informed of all aspects of the RWHF.

#### **7. Program Compliance**

The DCDC Board of Directors will submit an annual report to DED, to be included as part of the DED's annual status report required under section 81-1201.11. The report shall certify that the Fund Applicant meets the requirement of the Rural Workforce Housing Investment Act and will include a breakdown of funded program activities.

The annual report to DED shall include, but not limited to:

- The name, location, and geographical region served by the Fund Administrator
- The number, amount, and type of David City RWHF invested in qualified activities
- The number, geographical location, type and amount of investments made
- A summary of matching funds and where such matching funds were generated; and
- The results of the required annual review of all financial records by an independent CPA

If the Fund Administrator ceases administration of the David City RWHF, it shall file a report with DED in a form and manner required by the DED Director. The City of David City can appoint a new Fund Administrator that meets the requirements of the David City RWHF.

If no new Fund Administrator is determined and the David City RWHF ceases administration the following actions must take place:

- Before July 1, 2027 any unallocated grant funds shall be returned to DED for credit to the RWHF
- On and after July 1, 2027, any unallocated grant funds shall be returned to DED for credit to the General Fund
- If the David City RWHF ceases, any unallocated grant funds are returned to DED, and cash match funds are returned to the City of David City it will be their discretion as to where the funds are used from that point forward

#### **M. RISK MITIGATION**

The Fund Administrator will take many precautions to minimize risk not only on the fund level but on the Project level as well, so the funds can continue to revolve and ultimately continue to add workforce housing in the city of David City. The David City RWHF will be administered in compliance with this Fund Investment Plan. An experienced and diverse DCDC Board of Directors consisting of City leadership, lending/realtor/developers' individuals have been established to assist in the oversight of the David City RWHF. As identified earlier in this plan, the application process will involve packaging, then review by the DCDC Board of Directors, who will ultimately provide either approval or denial. DCDC Board of Directors shall conduct a complete review of all outstanding loans at least annually.

##### **1. Fund Level**

The Fund Administrator has procedures that provide guidance to the Fund Manager as well as the Board of Directors. Many practices in managing the David City RWHF are already in place.

- The Fund Administrator will deposit the David City RWHF proceeds in local financial institutions ensuring that the totals funds on deposit at each institution do not exceed the FDIC limits of insurance.
- Liens and Security Instruments common in lending practices always be utilized
- The Fund Administrator will secure an independent CPA to review all financial records annually

##### **2. Project Level**

Risk mitigation will also be a high priority of the Fund Administrator on the project level.

- Title insurance will be provided to determine legal descriptions, outstanding liens, current taxes, etc.
- Traditional lending documents will be used to ensure there is adequate security for the loan, this will be done by filing liens on the property, deed restrictions and other legal documents applicable to each loan and project

- Periodic inspections of the housing projects will be completed and documentation of the findings will be noted in each borrower's file
- The Real Estate Property taxes must be made current prior to the release of the David City RWHF loan proceeds
- Borrowers must not be debarred, suspended, proposed for debarment, placed in ineligibility status, or voluntarily excluded from covered transactions by HUD or any other federal agency under the provisions of Executive Order 12549 "Debarment and Suspension" and 24 C.F.R. Part 24 (government debarment and suspension regulations)
- All borrowers must be authorized to transact business in the State of Nebraska. All borrowers are expected to comply with all Nebraska Secretary of State and Department of Revenue registration requirements, including any registration requirements pertaining to types of business entities (e.g., person, partnership, foreign/domestic limited liability company, association, or foreign/domestic corporation). Borrowers are expected to meet all applicable requirements of the Nebraska Contractor Registration Act. Upon request, the Borrower must submit copies of written agreements to the Fund Administrator
- Project development can take place within the Flood Plain of David City, providing the following criteria is met:
  - Flood Insurance available and obtained to insure the dwelling(s)
  - Permanent financing available from traditional lenders, and
  - Property is developed to an elevation to meet local code enforcement
  - If flood plain determination changes while loan is outstanding, appropriate flood insurance will be required or can be released, depending on situation

### 3. Insurance

For all loans, the borrower shall be required to carry liability insurance with coverage of no less than \$2 million aggregate/\$1 million per occurrence. Builder's risk insurance coverage is based on the total development budget or in case of casualty insurance, based on replacement cost. Borrower shall further be required to have the Fund Administrator named as loss payee or as an additional insured on all policies and current copies shall be submitted to the Fund Administrator throughout the loan term.

Performance Bonds may be required on most transactions, depending on the size and scope of the housing project. This will be negotiated between the Fund Administrator and borrower.

For Down Payment Assistance loans, the borrower shall be required to carry hazard or property insurance against loss by fire, hazards included with the term "extended coverage" and any other hazards including floods or flooding, for a minimum amount of at least the cumulative debt amount on the property. Borrower shall further be required

DCDC Fund Investment Plan (Adopted 03/17/2023)

to have the Fund Administrator named as loss payee or as an additional insured on all policies and current copies shall be submitted to the Fund Administrator throughout the loan term.

**N. CONFLICT OF INTEREST**

No officer, employee or agent of the Fund Administrator who will participate in the selection, the award, or the administration of these funds may obtain a personal or financial interest or benefit from the activity or have an interest in any loan with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties. Exceptions may be granted on a case-by-case basis when it is determined that such an exception will serve the purposes of the David City RWHF and the effective and efficient administration of this fund.

**O. FUTURE USE PLAN**

Borrowers will make payments in accordance with the loan agreement and promissory note, executed at loan closing.

Principal portion of the payments received by the Fund Administrator will be held in financial institutions insured by FDIC until loaned to subsequent applicants using the same criteria as outlined in this Fund Investment Plan.

**P. AMENDMENTS TO PLAN**

In an ongoing effort to improve the quality of the David City RWHF Fund Investment Plan, the DCDC Board of Directors will accept suggestions from the public, program participants and the Fund Manager. All suggestions received will be taken to the DCDC Board of Directors to review consideration to amend the Fund Investment Plan. Upon approval and adoption by the DCDC Board of Directors, the amendment(s) will be included in the David City RWHF Fund Investment Plan. Changes to the attachments do not require DCDC Board approval.

**Q. GRIEVANCE PROCEDURES**

If any applicant feels he or she has been unfairly treated or discriminated against during the loan application process or within any other segment of the David City RWHF, he or she may appeal the decision to the DCDC Board of Directors for their consideration. The appeal must be submitted in writing to the President and postmarked within 14 days of the decision. The DCDC Board of Directors will act upon the appeal within 60 days of the receipt of the appeal. The Board of Directors will have final authority in the decision.



DED will be contacted in the case that any grievance issues cannot be resolved through DCDC Board of Directors normal grievance procedures.

**R. SUCCESSION OF ADMINISTRATOR**

If DCDC Board of Directors decides to cease to be the Administrator of the David City RWHF, a 90-day written notice will be provided to DED and the City of David City. The Nebraska Department of Economic Development and the City of David City will determine a process at that time to search for a new David City RWHF Administrator.

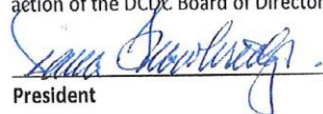
**S. CHANGE OF FUND MANAGER(S)**

If the DCDC Board of Directors is not pleased with the results of the Fund Managers efforts of performing the duties as Fund Managers of the David City RWHF, written notice will be provided to the Fund Manager. At that time negotiations will take place to either make changes or end Fund Management Contract.

**T. OFFICIAL CONTACT**

The place of contact for this Rural Workforce Housing Fund shall be the office of the David City Development Corporation 490 E Street, David City, NE 68632. Any grievances, suggestions, requests for applications and information should be directed to this office.

This David City Rural Workforce Housing Fund Investment Plan was hereby amended by the action of the DCDC Board of Directors on this 17<sup>th</sup> day of March 2023.

  
President

## Glossary/Acronyms

**Applicant** – Eligible entity that is seeking loan proceeds from the David City RWHF.

**Application** – Document that is used by the Applicant to submit the required information when requesting funds.

**Borrower** – Entity that is approved to receive funding from the David City RWHF.

**DCDC Board of Directors** – members of the David City Development Corporation of Board of Directors.

**DED/NDED** – Nebraska Department of Economic Development.

**DPA** – Down Payment Assistance Loan.

**Fund Administrator** – David City Board of Directors is responsible for overall management of the daily operations of the RWHF for David City.

**Fund Manager** – Third Party contracted to assist in the management of the DCDC RWHF.

**Grant Administration/Housing Management** – Fees typically paid from grant proceeds, however, the David City RWHF does not allow this, so these fees must be paid to the Fund Administrator from another source.

**Lender** – Conventional financial institution that is providing loan proceeds for the financing of a housing project.

**Review Criteria** – Document used by DCDC Board of Directors for loan application for review.

**RWHF** – Rural Workforce Housing Fund.

**Scoring Sheet** – Document used by DCDC Board of Directors to rank/rate applications.

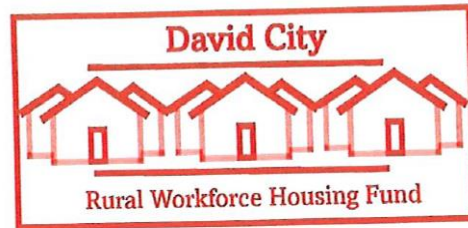
## **ATTACHMENT #1**

### **Nebraska Department of Economic Development Maximum Valuations**

The maximum valuations of housing units that are developed with the use of the David City Rural Workforce Housing Fund are to be adhered to, they are established by the Nebraska Department of Economic Development. Valuation maximums at the time of loan originations will be applicable.

#### **April 18, 2022, Valuations**

- **\$325,000 maximum cost for owner-occupied housing units.**
- **\$250,000 maximum cost per rental unit.**



## FINANCING APPLICATION

Thank you for your interest in the David City Development Corporation (DCDC) Rural Workforce Housing Fund (RWHF). Loans will be provided to fund housing development projects. The use of the loan proceeds and how the project will generate income to repay the borrowed money will be evaluated.

The DCDC RWHF can only be used for projects within the city limits of David City as well as within the 1-mile jurisdiction area as established by the City of David City. NeighborWorks Northeast Nebraska (NWNEN) is the Fund Manager.

Financing Applications are considered on a first-ready, first-served basis. Scoring criteria will be used to;

- (1) rate the project and financing viability, and
- (2) select applications when demand for financing exceeds available financing resources.

### Major Components of Underwriting:

**Financial Strength.** The Financial health of the applicant will be analyzed by reviewing its revenue, balance sheet make-up, real estate portfolio, cash flow forecast and financial ratios, etc.

**Repayment Plan.** The planned deployment and repayment of the loan proceeds will be considered and evaluated as to whether the proposed cycle(s) of investment is consistent with experience.

**Project Development.** The impact of the proposed housing project to the workforce housing needs of David City will be considered.

Please contact NWNEN to discuss how a DCDC RWHF loan may provide additional housing stock for the David City workforce.

|                        |              |  |
|------------------------|--------------|--|
| Roger Nadrchal, CEO    | 402-379-3311 | <a href="mailto:rogern@nwnen.org">rogern@nwnen.org</a>     |
| Quelbin Izaguirre, COO | "            | <a href="mailto:quelbini@nwnen.org">quelbini@nwnen.org</a> |
| Karen Eisenbraun, CFO  | "            | <a href="mailto:karene@nwnen.org">karene@nwnen.org</a>     |

When ready to proceed, please complete this financing application (including the compilation of required additional information and the Applicant Certification). The application materials may be submitted electronically, but the application fee should be payable to and mailed to:

NeighborWorks Northeast Nebraska  
213 South 1<sup>st</sup> Street, Norfolk, NE 68701



The DCDC RWHF reserves the right to offer financing amounts, terms, and conditions as a counter-proposal to the application request. DCDC RWHF reserves the right to deny financing based on a substantial weakness in any one scoring criteria, even if all other criterion is determined to be strong. Potential applicants are encouraged to discuss financing needs with the Fund Manager prior to completing a full application to receive assistance on (1) likely qualification as an eligible financing recipient and (2) assistance on strengthening the financing application.

***ELIGIBILITY:** DCDC RWHF provides nontraditional financing to assist with the production of workforce housing. No applicant shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in accordance with Title VI of the Civil Rights Act of 1964 as amended. DCDC RWHF also complies with Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Drug Abuse Office and Treatment Act of 1972, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Section 523 and 527 of the Public Health Service Act of 1912 and Title VIII of the Civil Rights Act of 1968.*

**APPLICANT CONTACT INFORMATION**

Applicant Legal Name: \_\_\_\_\_  
Contact Name 1: \_\_\_\_\_  
Contact Name 2: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Daytime Phone No: \_\_\_\_\_

Business Organization:     Individual(s)                       Sole Proprietorship  
    "S" Corporation                       "C" Corporation  
    General Partnership                       Limited Partnership  
    Limited Liability Co.

NOTE: \$250.00 Application Fee must be received before underwriting will begin

**APPLICANT EXPERIENCE**

Length of time in development field:

\_\_\_\_\_

Number of projects developed:

\_\_\_\_\_

Development history:

\_\_\_\_\_

Is there any outstanding litigation against developer? If yes, explain.

\_\_\_\_\_

**GUARANTOR/COLLATERAL (when applicable)**

Guarantor(s) for loan or equity investment (must be financially able to repay loan or provide return on equity, may be individual(s) and/or multiple parties):

\_\_\_\_\_

Is there any outstanding litigation against the guarantor? If yes, explain.

\_\_\_\_\_

Collateral for loan (e.g. lien on real estate).

\_\_\_\_\_

**PROJECT INFORMATION**

Project Name: \_\_\_\_\_

Address of Project Street: \_\_\_\_\_

Number and values of **new construction single-family units for ownership:**

*(Values not to exceed \$325,000 per unit)*

Number of 2 bedroom units: \_\_\_\_\_ Value: \_\_\_\_\_

Number of 3 bedroom units: \_\_\_\_\_ Value: \_\_\_\_\_

Number of 4 bedroom units: \_\_\_\_\_ Value: \_\_\_\_\_

Number and values of **new construction single-family units for rental:**

*(Values not to exceed \$250,000 per unit)*

Number of 2 bedroom units: \_\_\_\_\_ Value: \_\_\_\_\_ Rent: \_\_\_\_\_

Number of 3 bedroom units: \_\_\_\_\_ Value: \_\_\_\_\_ Rent: \_\_\_\_\_

Number of 4 bedroom units: \_\_\_\_\_ Value: \_\_\_\_\_ Rent: \_\_\_\_\_

Number of units because of **substantial repair or rehabilitation of dilapidated stock** (cost to rehabilitate must exceed 50% of unit's assessed value):

*(If Owner-Occupied: Value(s) Not to exceed \$325,000 per unit)*

*(If Rental: Value(s) Not to exceed \$250,000 per unit)*

Number of 2 bedroom units: \_\_\_\_\_ Value: \_\_\_\_\_ Rent: \_\_\_\_\_

Number of 3 bedroom units: \_\_\_\_\_ Value: \_\_\_\_\_ Rent: \_\_\_\_\_

Number of 4 bedroom units: \_\_\_\_\_ Value: \_\_\_\_\_ Rent: \_\_\_\_\_

Number of **upper story housing units**:

*(If Owner-Occupied: Value(s) Not to exceed \$325,000 per unit)*

*(If Rental: Value(s) Not to exceed \$250,000 per unit)*

Number of 2 bedroom units: \_\_\_\_\_ Value: \_\_\_\_\_ Rent: \_\_\_\_\_

Number of 3 bedroom units: \_\_\_\_\_ Value: \_\_\_\_\_ Rent: \_\_\_\_\_

Number of 4 bedroom units: \_\_\_\_\_ Value: \_\_\_\_\_ Rent: \_\_\_\_\_

Number of units as a result of **converting an existing building into housing**:

*(If Owner-Occupied: Value(s) Not to exceed \$325,000 per unit)*

*(If Rental: Value(s) Not to exceed \$250,000 per unit)*

Number of 2 bedroom units: \_\_\_\_\_ Value: \_\_\_\_\_ Rent: \_\_\_\_\_

Number of 3 bedroom units: \_\_\_\_\_ Value: \_\_\_\_\_ Rent: \_\_\_\_\_

Number of 4 bedroom units: \_\_\_\_\_ Value: \_\_\_\_\_ Rent: \_\_\_\_\_

Owner of project during development (non-profit, LP, LLC, sole proprietorship, individual):  
\_\_\_\_\_

Owner of project when ready for occupancy.  
\_\_\_\_\_

Description of housing development project.  
\_\_\_\_\_

What market is the project planned to fulfill?  
\_\_\_\_\_

Does the community support this project?  
\_\_\_\_\_

What is the current status of project?  
\_\_\_\_\_

Site description (include current use of site).  
\_\_\_\_\_

What is the current ownership of the proposed site? If applicant is not the current owner of the site what is planned to obtain site control?  
\_\_\_\_\_

What is the current zoning of site. If zoning is not applicable to the housing project what is planned to change the zoning?

---

Has the Final Plat been approved by City leadership?

---

What utilities are available to the site?

---

Are there any Environmental issues on site? If yes, how will they be addressed?

---

What Lenders are planned to participate in financing the housing project?

---

Will there be an architect? If yes, who will be the project architect?

---

Who is anticipated to be the project General Contractor?

---

If rental project who will be the project property manager?

---

Are there other team members? If yes, who are they and what are their roles?

---

**LOAN REQUEST**

Amount of Request. \_\_\_\_\_

What type of expenses (e.g. predevelopment, land, soft costs, construction costs, etc.) will be paid for with the loan proceeds?

---

Term/maturity requested.

---

What is the payment plan (e.g. monthly, quarterly, semi-annual, annual or upon completion of project).

---



**LOAN MANAGEMENT/REPAYMENT**

Are you requesting funds to be disbursed in one draw or installments? Explain.

---

Who on staff will be responsible and have oversight on how these funds will be repaid?

---

What is the primary repayment source for the loan?

---

What is the secondary repayment source for the loan?

---

Loan Guarantee additional items to include: Lender, Amount to be guaranteed, Conditions for guarantee payment on loan.

---

**ESTIMATED DEVELOPMENT BUDGET**

**USES**

Acquisition \$ \_\_\_\_\_

Infrastructure \$ \_\_\_\_\_

Construction \$ \_\_\_\_\_

Professional Fees \$ \_\_\_\_\_

Finance Costs \$ \_\_\_\_\_

Soft Costs \$ \_\_\_\_\_

Developer Fee \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

Type \_\_\_\_\_

Other \$ \_\_\_\_\_

Type \_\_\_\_\_

Other \$ \_\_\_\_\_

Type \_\_\_\_\_

**TOTAL COSTS** \$ \_\_\_\_\_

**SOURCES**

Cash on Hand \$ \_\_\_\_\_

Financing \$ \_\_\_\_\_

Source \_\_\_\_\_

\$ \_\_\_\_\_

Source \_\_\_\_\_

\$ \_\_\_\_\_

Source \_\_\_\_\_

RWHF \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

Source \_\_\_\_\_

Other \$ \_\_\_\_\_

Source \_\_\_\_\_

Other \$ \_\_\_\_\_

Source \_\_\_\_\_

**TOTAL SOURCES** \$ \_\_\_\_\_

DCDC Financing Application (Revised 02/07/2023)

**TIMELINE OF MAJOR MILESTONE EVENTS/DATES**

Site Control: \_\_\_\_\_

Zoning Approvals: \_\_\_\_\_

Planning Commission Approvals: \_\_\_\_\_

Environmental Clearance: \_\_\_\_\_

Market Study: \_\_\_\_\_

Selection of Contractor: \_\_\_\_\_

Selection of Property Management: \_\_\_\_\_

Ownership Equity Established: \_\_\_\_\_

Appraisal: \_\_\_\_\_

Construction Financing Sources: \_\_\_\_\_

Permanent Financing Sources: \_\_\_\_\_

Start of Construction: \_\_\_\_\_

Completion of Construction: \_\_\_\_\_

Projected Date of Certificate of Occupancy: \_\_\_\_\_

If Tax Increment Financing (TIF) is planned for project, provide TIF timeline:  
\_\_\_\_\_

**ADDITIONAL INFORMATION REQUIRED**

Please attach the following documents to this application as applicable. Please mark each with either an "X" or "N/A".

**Project Information**

- 15 Year Operating Proforma – projection of cash flow for the project (If Rental Project)
- Site plan of housing development
- Housing plans of proposed housing project
- Environmental information as required by each funding source
- Project financing information including timing assumptions, development sources and uses of funds
- Rehabilitation financing proforma and unit selection criteria
- Development proforma
- Project drawings and specifications as available
- Evidence of site control
- Lenders title insurance commitment if a real estate lien will be used for collateral on a loan

**Organization/Financial Information**

- Personal tax returns of the applicant (20% or more ownership) for the past two years
- Business tax returns for the past three years, profit/loss statements/balance sheet of the business (if existing)
- Bank Pre-Approval Letter
- Letters of commitment from other funding sources
- Credit History Authorization
- Organization documents of the borrower/investee and all guarantors (formation documents such as Articles and Bylaws)
- Current Certificate of Good Standing for the borrower/investee and all guarantors
- Schedule of guarantees/contingent liabilities
- Detail of outstanding litigation against borrower/investee, developer or any guarantor
- Bios/resumes for development team
- Current strategic and operations/business plan

**Notes:** Personal Financial documentation such as Tax Returns, Financial Statements will be provided to a minimum of application reviewers, contact Fund Administrator for that list of reviewers.

Additional documentation may be required for the Fund Administrator to process this application.

ONCE ALL THE ABOVE INFORMATION INCLUDING ADDITIONAL INFORMATION NOT LISTED BUT REQUESTED HAS BEEN RECEIVED, THE APPLICATION WILL BE DEEMED TO BE COMPLETE. THE COMPLETED APPLICATION WILL BE IMMEDIATELY REVIEWED AND EITHER APPROVAL OR DENIAL WILL BE COMMUNICATED TO THE BORROWER WITHIN 30 DAYS.

**DAVID CITY DEVELOPMENT CORPORATION RURAL WORKFORCE HOUSING FUND  
APPLICANT CERTIFICATION**

The undersigned hereby makes application to the David City Development Corporation (DCDC) Rural Workforce Housing Fund (RWHF), on behalf of \_\_\_\_\_ for the requested loan amount in the application. The undersigned will indemnify and hold harmless Fund Manager, David City Development Corporation and their Board of Directors, employees, and agents against all losses, costs, damages, expenses, and liabilities of whatsoever nature or kind (including, but not limited to attorney's fees, litigation and court costs) directly or indirectly resulting from, arising out of, or related to, acceptance, consideration and approval or disapproval of such application.

The undersigned acknowledges that the \$250 application fee is nonrefundable regardless of if the loan is denied, approved or closed.

The undersigned, being duly authorized, hereby represents and certifies that the foregoing information and that which might subsequently be provided in response to further questions from DCDC RWHF during the underwriting process, to the best of his/her knowledge, is true, complete and accurate.

The undersigned gives DCDC RWHF permission to obtain any other information deemed relevant by the Fund Manager, Advisory Committee and Board of Directors. The undersigned acknowledges and accepts that, if the requested loan is approved and closed, additional information may be required for reporting.

The application and its submission do not constitute a commitment or an offer to lend but represents the undersigned's interest in borrowing from DCDC RWHF. No commitment should be construed or implied herein. The application does not purport to summarize all information needed to decide on the undersigned's request for a loan and does not contain terms, conditions, representations, warranties and other provisions that may be contained in any loan documentation. Neither the application nor any oral understandings relating to a loan are binding until and unless such terms or understandings have been reduced to a written agreement executed by both the undersigned and DCDC RWHF.

IN WITNESS WHEREOF, the Applicant has caused this document to be duly executed in its name on

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Applicant Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Applicant Printed Name

\_\_\_\_\_  
Title

DCDC Financing Application (Revised 02/07/2023)

## United States Citizenship Attestation Form

For the purpose of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:

I am a citizen of the United States.

— OR —

I am a qualified alien under the federal Immigration and Nationality Act, my immigration status and alien number are as follows: \_\_\_\_\_, and I agree to provide a copy of my USCIS documentation upon request.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete, and accurate and I understand that this information may be used to verify my lawful presence in the United States.

PRINT NAME \_\_\_\_\_  
(first, middle, last)

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

### CREDIT HISTORY SEARCH AUTHORIZATION

By signing this agreement, I hereby give full authorization to David City Development Corporation (Fund Administrator) & NeighborWorks Northeast Nebraska (Fund Manager), to perform a credit history search on my past and current credit history.

Applicants Full Name: \_\_\_\_\_

"Doing Business As": \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Social Security Number: \_\_\_\_\_  
OR  
Federal Tax I.D. Number: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Employment: \_\_\_\_\_

Employers Address: \_\_\_\_\_

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**This space for administrative purposes only:**

Date application received: \_\_\_\_\_

Date application determined complete: \_\_\_\_\_

Date submitted to Fund Manager: \_\_\_\_\_

Date reviewed by Fund Manager: \_\_\_\_\_

Initial Fund Manager Review

Action of Fund Manager: Approve \_\_\_\_\_  
Need More Info. \_\_\_\_\_  
Denial \_\_\_\_\_

Subsequent Fund Manager Review

Date re-submitted to DCDC Board of Directors: \_\_\_\_\_

Date reviewed by DCDC Board of Directors: \_\_\_\_\_

Action of DCDC Board of Directors: Approve \_\_\_\_\_  
Need More Info. \_\_\_\_\_  
Denial \_\_\_\_\_

DCDC Board of Directors Review

Date submitted to DCDC Board of Directors: \_\_\_\_\_

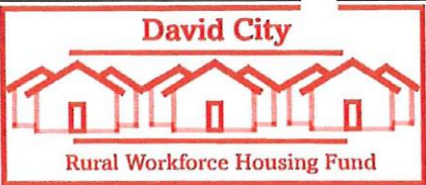
Date reviewed by DCDC Board of Directors: \_\_\_\_\_

Action of DCDC Board of Directors: Approve \_\_\_\_\_  
Need More Info. \_\_\_\_\_  
Denial \_\_\_\_\_

Date notification provided to Applicant: \_\_\_\_\_

Notes to file:  
\_\_\_\_\_



|   |  |  |  |  |  |  |
|---|--|--|--|--|--|--|
|  <p><b>David City</b><br/>Rural Workforce Housing Fund</p>   | <p><b>PROJECT SELECTION SCORING WORKSHEET<br/>AND REVIEW CRITERIA</b></p>  |  |  |  |  |  |
| <p><b>Section 1: PROJECT INFORMATION</b></p>  | <p>Each loan application will be evaluated to determine: the credit worthiness of borrowers and for underwriting a loan application; the benefits to be provided to the residents of the City of David City; impact the housing project will have on the City; and compliance with federal, state and local laws, regulations and policies. The evaluation criteria include the following:</p> |  |  |  |  |  |
| <p><b>Scoring Criteria: (5 pts. = "YES"; 0 pts. = "NO")</b></p>   |  |  |  |  |  |  |
| <p><b>1. Project Location</b><br/>Is the housing project within the city limits of David City?<br/>(5 points within City-Limits at time of application or funding disbursement)<br/>(1 point outside of City-Limits but within 1 mile jurisdiction)</p>   |  |  |  |  |  |  |
| <p><b>2. Qualified Activity</b><br/>What type of qualified activity will loan funds be used for?<br/>(5 points - Land acquisition, infrastructure, construction)<br/>(3 points - Rehabilitation)<br/>(1 point - Loan guarantees, rent guarantees, loan participations, credit enhancements)</p> |  |  |  |  |  |  |
| <p><b>3. Land/Site Ownership</b><br/>Does Applicant own land/site of development?<br/>(5 points - Currently own)<br/>(3 points - Purchase Agreement/Option, not closed)<br/>(1 point - No land identified or under control)</p>   |  |  |  |  |  |  |
| <p><b>4. Housing Units</b><br/>How many housing units will be added to the housing stock?<br/>(5 points - &gt; 50)<br/>(4 points - 26-50)<br/>(3 points - 11-25)<br/>(2 points - 5-10)<br/>(1 point - &lt; 5)</p>   |  |  |  |  |  |  |
| <p><b>5. Amount of RWHF Used Per Unit</b><br/>What dollar amount of RWHF funds will be used per unit?<br/>(5 points - ≤ \$20k)<br/>(3 points - \$21k-\$50k)<br/>(1 point - &gt; \$50k)</p>  |  |  |  |  |  |  |
| <p><b>6. Loan Term</b><br/>What length of loan is Applicant seeking?<br/>(5 points = 1 year)<br/>(4 points = 2 years)<br/>(3 points = 3 years)<br/>(2 points = 4 years)<br/>(1 point = 5 years)<br/>(0 point = &gt; 5 years)</p>  |  |  |  |  |  |  |
| <p><b>7. Loan Interest Rate</b><br/>What loan interest rate is Applicant requesting?<br/>(5 points - ≥ 2%)<br/>(0 points &lt; 2%)</p>   |  |  |  |  |  |  |
| <p><b>8. Timeliness of Project Start</b><br/>Upon receiving loan approval how soon can the project construction start?<br/>(5 pts. &lt; 6 months)<br/>(3 pts. = 7-12 months)<br/>(1 pt. &gt; 12 months)</p>   |  |  |  |  |  |  |
| <p><b>9. Estimated Completion of Entire Housing Project</b><br/>Upon receipt of loan proceeds, how soon will housing project be completed?<br/>(5 pts. &lt; 12 months)<br/>(3pts. = 12-24 months)</p>   |  |  |  |  |  |  |

|   |          |          |          |          |          |          |
|---|----------|----------|----------|----------|----------|----------|
| <b>10. Application Complete</b><br>Has the applicant answered all questions on the application and provided all requested supporting documents?<br>(5 pts. = "YES")<br>(3 pts. = "Certain Data Not Available")<br>(0 pts. = "NO")   |          |          |          |          |          |          |
| <b>SCORE Section 1:</b>   | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |
| <b>Section 2: REVIEW CRITERIA</b>   |          |          |          |          |          |          |
| Each loan application will be evaluated to determine: the credit worthiness of borrowers and for underwriting a loan application; the benefits to be provided to the residents of the City of David City; Impact the housing project will have on the City; and compliance with federal, state and local laws, regulations and policies. The evaluation criteria include the following: |          |          |          |          |          |          |
| <b>Project Feasibility: (5 pts. = "YES"; 0 pts. = "NO")</b>   |          |          |          |          |          |          |
| 11. Is the project economically viable?   |          |          |          |          |          |          |
| 12. Based on realistic market projections, will cash flow be sufficient to repay the loan?  |          |          |          |          |          |          |
| 13. Does applicant have sufficient experience in the housing field?   |          |          |          |          |          |          |
| 14. Is collateral adequate to support the loan?   |          |          |          |          |          |          |
| 15. In the event of default, how difficult will the foreclosure process be?   |          |          |          |          |          |          |
| 16. Have all owners, and principals provided necessary information evidencing support of the loan? Do the guarantors have sufficient assets to pay off the loan?  |          |          |          |          |          |          |
| 17. Do the credit reports of the applicant and owners indicate a history of prompt payment?   |          |          |          |          |          |          |
| 18. Has an adequate business plan been prepared?  |          |          |          |          |          |          |
| <b>SUBTOTAL SCORE Section 2:</b>  |          |          |          |          |          |          |

|   |  |  |  |  |  |  |
|---|--|--|--|--|--|--|
| <b>Section 3: INFORMATIONAL</b>   |  |  |  |  |  |  |
| Each loan application will be evaluated to determine: the credit worthiness of borrowers and for underwriting a loan application; the benefits to be provided to the residents of the City of David City; impact the housing project will have on the City; and compliance with federal, state and local laws, regulations and policies. The evaluation criteria include the following: |  |  |  |  |  |  |
| <b>Community Benefits: (5 pts. = "YES"; 0 pts. = "NO")</b>  |  |  |  |  |  |  |
| 19. How many housing units will be added to the housing stock?  |  |  |  |  |  |  |
| 20. What are the sales prices or monthly rents of the housing units?  |  |  |  |  |  |  |
| 21. What will the environmental impact be if the housing project is established in the City of David City?  |  |  |  |  |  |  |
| 22. Will the project add diversity and stability to the local economy?  |  |  |  |  |  |  |
| 23. Is the housing project like any other housing projects currently in process or being planned?   |  |  |  |  |  |  |
| 24. If this loan is approved, will the applicant gain an unfair advantage over local competition?   |  |  |  |  |  |  |
| 25. Will this project provide positive "spin-off" benefits to existing businesses?  |  |  |  |  |  |  |
| 26. Will the project necessitate the relocation of individuals or businesses?   |  |  |  |  |  |  |
| 27. Have all owners or principals provided assurance of compliance with all laws and regulations?   |  |  |  |  |  |  |
| <b>SUBTOTAL SCORE Section 3:</b>  |  |  |  |  |  |  |
| <b>TOTAL SCORE (Add Sections 1, 2 and 3):</b>   |  |  |  |  |  |  |

Mayor Jessica Miller declared the public hearing open at 7:19 a.m. to consider the adoption of a One-Year and Six-Year Street Improvement program for the City of David City.

David McPhillips introduced himself and asked if there was a map for the One-Year and Six-Year Street plan.

City Clerk Tami Comte stated that she thought that Andrew Wilshusen would be bringing one with him.

Council member Keith Marvin had a map with him from the previous meeting that David McPhillips could review.

It was noted that the only change on the map would be the addition of Scout Lane into Zegers 1<sup>st</sup> Addition.

Special Projects Coordinator Dana Trowbridge introduced himself and stated that we really can't table this because the State of Nebraska needs to review Scout Lane so that it can be approved, and they want to start seeing progress on the development of Zegers 1<sup>st</sup> Addition.

Hearing no further comments, Mayor Jessica Miller declared the public hearing closed at 7:29 p.m.

Council member Keith Marvin made a motion to pass and adopt Resolution No. 23-2023 updating the One-Year and Six-Year Street Improvement Plan. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

### **RESOLUTION NO. 23-2023**

WHEREAS, The City of David City, Nebraska, has conducted a Public Hearing on June 14, 2023, in accordance with the requirements of the Board of Public Roads Classifications and Standards.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the One Year and Six Year Street Improvement Plans for Streets, as presented at the public hearing, are unanimously accepted and the City Clerk is hereby instructed to forward a certified copy of this resolution to the Board of Public Roads Classification and Standards of the State of Nebraska.

PASSED AND APPROVED this 14<sup>th</sup> day of June, 2023.

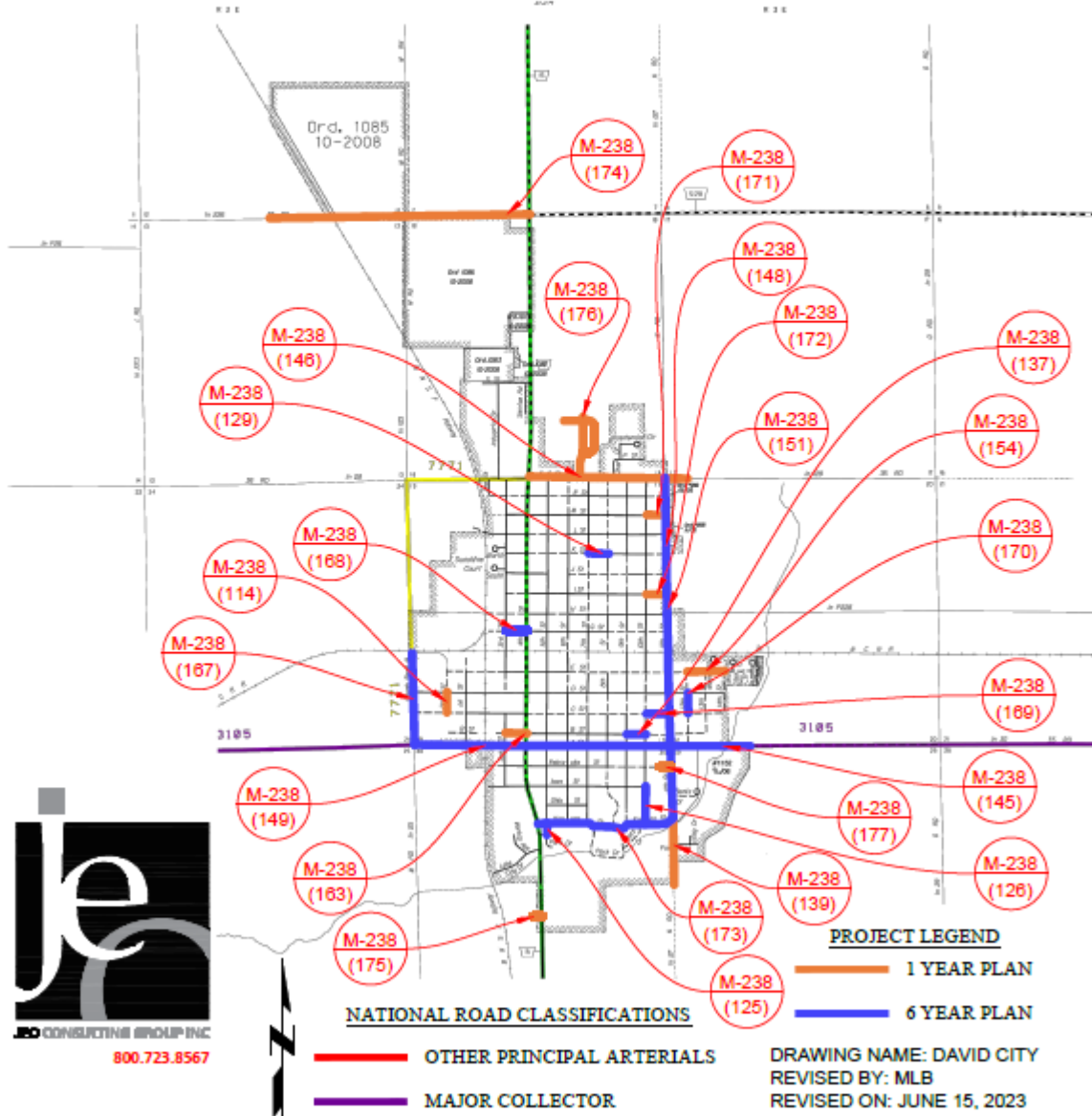
\_\_\_\_\_  
 Mayor Jessica J. Miller

\_\_\_\_\_  
 City Clerk Tami L. Comte

| One Year Plan - Fiscal Year 2023/2024 Projects (October 1st to September 30th) |                |            |                   |  | City of David City |              |
|--|----------------|------------|-------------------|--|--------------------|--------------|
| Project #  | Street Name    | Start      | End               | Description of Work  | Length (mi)        | Est. Cost    |
| M-238(114)   | Oak Street     | "C" Street | "D" Street        | Existing Asphalt Street to 27' Wide 6" Concrete Street             | 0.08               | \$ 130,000   |
| M-238(139)   | 11th Street    | Kansas St. | Cemetery          | Existing Gravel Street to 27' Wide 6" Concrete Street (NIC Bridge) | 0.48               | \$ 325,000   |
| M-238(146)   | "O" Street     | 4th St.    | 12th St.          | Existing Asphalt Street to 27' Wide 8" Concrete Street.            | 0.7                | \$ 1,164,000 |
| M-238(154)   | "E" Street     | 12th St.   | 14th St.          | Existing Asphalt Street to 27' Wide 6" Concrete Street             | 0.22               | \$ 350,000   |
| M-238(163)   | "B" Street     | 3rd St.    | 4th St.           | Existing Asphalt Street to 27' Wide 6" Concrete Street             | 0.08               | \$ 125,000   |
| M-238(171)   | "M" Street     | 10th St.   | 11th St.          | Existing Asphalt Street to 28' Wide 6" Concrete Street             | 0.08               | \$ 135,000   |
| M-238(172)   | "I" Street     | 10th St.   | 11th St.          | Existing Asphalt Street to 28' Wide 6" Concrete Street             | 0.08               | \$ 135,000   |
| M-238(174)   | Road 37        | Hwy 15     | West Corp. Limits | Existing Gravel Street to be 32' wide Concrete Street              | 1.2                | \$ 3,800,000 |
| M-238(175)   | Northland Sub. |            |                   | Concrete Street Paving, Drainage Improvements                      | 1                  | \$ 1,500,000 |
| M-238(176)   |                | Hwy 15     | Development       | Concrete Street Paving   | 0.08               | \$ 150,000   |
| M-238(177)   | Nebraska St.   | 10th St.   | 11th St.          | Existing Gravel Street to 24' Asphalt                              | 0.04               | \$ 35,000    |
|  |                |            |                   |  |                    |              |
|  |                |            |                   |  |                    |              |
|  |                |            |                   |  |                    |              |
|  |                |            |                   |  |                    |              |

| Six Year Plan - Fiscal Year 2024/2025 to 2028/2029 Projects (October 1st to September 30th) |               |            |                       |  | City of David City |              |
|---|---------------|------------|-----------------------|--|--------------------|--------------|
| Project #   | Street Name   | Start      | End                   | Description of Work                                    | Length (mi)        | Est. Cost    |
| M-238(125)  | 5th Street    | Kansas St. | Park Trail            | Existing Gravel Street to 27' Wide 6" Concrete Street  | 0.5                | \$ 175,000   |
| M-238(126)  | 10th Street   | Kansas St. | Iowa St.              | Existing Gravel Road to 27' Wide 6" Concrete Street    | 0.14               | \$ 250,000   |
| M-238(129)  | "K" Street    | 7th St.    | 8th St.               | Existing Asphalt Street to 28' Wide 6" Concrete Street | 0.07               | \$ 115,000   |
| M-238(137)  | "B" Street    | 9th St.    | 10th St.              | Existing Asphalt Street to 27' Wide 6" Concrete Street | 0.07               | \$ 115,000   |
| M-238(145)  | "A" Street    | Hwy 15     | East Corporate Limits | Existing Bituminous Street with Asphalt Overlay        | 1.05               | \$ 350,000   |
| M-238(148)  | 11th Street   | "O" St.    | "H" St.               | Existing Asphalt Street to 32' Wide 8" Concrete Street | 0.5                | \$ 1,500,000 |
| M-238(149)  | "A" Street    | Hwy 15     | County Road M         | Existing Asphalt Street to 27' Wide 8" Concrete Street | 0.42               | \$ 850,000   |
| M-238(151)  | 11th Street   | "H" St.    | "A" St.               | Existing Asphalt Street to 32' Wide 8" Concrete Street | 0.82               | \$ 2,400,000 |
| M-238(167)  | "M" Road      | "A" St.    | CNRR                  | Existing Asphalt Street to 27' Wide 6" Concrete Street | 0.37               | \$ 700,000   |
| M-238(168)  | "G" Street    | 3rd St.    | 4th St.               | Existing Asphalt Street to 24' Wide 6" Concrete Street | 0.07               | \$ 115,000   |
| M-238(169)  | "C" Street    | 10th St.   | 10th St.              | Existing Asphalt Street to 24' Wide 6" Concrete Street | 0.07               | \$ 115,000   |
| M-238(170)  | 12th Street   | "C" St.    | "D" St.               | Existing Asphalt Street to 24' Wide 6" Concrete Street | 0.07               | \$ 115,000   |
| M-238(173)  | Kansas Street | 4th St.    | 11th St.              | Existing Asphalt Street to 28' Wide 6" Concrete Street | 0.55               | \$ 1,125,000 |
|   |               |            |                       |  |                    |              |
|   |               |            |                       |  |                    |              |
|   |               |            |                       |  |                    |              |

# DAVID CITY, NEBRASKA ONE AND SIX YEAR PLAN FISCAL YEAR 23/24-28/29



Council member Tom Kobus made a motion to approve the quote of Gehring Construction for paving 5th Street from the Nebraska Central Railroad to "G" Street. Council Member Pat Meysenburg seconded the motion. The motion carried.  
 Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
 Yea: 6, Nay: 0

**M.E. COLLINS CONTRACTING CO., INC.**

P.O. Box 83 980 E 25 th Street Wahoo, NE 68066  
 (402) 443-3663 FAX (402) 443-5013

**SUBMITTED TO:** David City, NE - Attn Chris Kroesing  
**PROJECT:** David City, NE - 5th & G Street  
**LOCATION:** David City, NE  
**LETTING:** N/A

*We hereby propose to furnish all the materials and perform all the work necessary for the above project as follows:*

| <u>Item</u>            | <u>Quantity</u> | <u>Units</u> | <u>Description</u>                                    | <u>Unit Price</u> | <u>Amount</u>        |
|------------------------|-----------------|--------------|---|-------------------|----------------------|
| 1                      | 1.00            | LS           | Traffic Control / Mobilization                        | \$ 10,505.00      | 10,505.00            |
| 2                      | 1,185.00        | SY           | Remove Brick and Pavement / Salvage Brick to the City | \$ 16.80          | 19,908.00            |
| 3                      | 1,185.00        | SY           | 12" Subgrade Prep                                     | \$ 6.80           | 8,058.00             |
| 4                      | 1,185.00        | SY           | 8" Concrete Pavement                                  | \$ 94.20          | 111,627.00           |
| 5                      | 180.00          | SF           | 6" Concrete Driveway                                  | \$ 10.50          | 1,890.00             |
| 6                      | 48.00           | SF           | 5" Concrete Sidewalk                                  | \$ 14.20          | 681.60               |
| 7                      | 16.00           | SF           | Detectable Warning Panels (If Required)               | \$ 35.80          | 572.80               |
| 8                      | 6.50            | STA          | Shouldering   | \$ 434.80         | 2,826.20             |
| <b>Total Base Bid:</b> |                 |              |   |                   | <b>\$ 156,068.60</b> |

*Final payment to be based on "as built" field measured quantities, unless otherwise stated.*

*The following items are not included:*

|                               |  |  |
|-------------------------------|--|--|
| Staking<br>Seeding<br>Permits | Engineering<br>Erosion Control<br>Utility Work | Clearing and Grubbing<br>Testing<br>Sprinkler Repair |
|-------------------------------|--|--|

**M. E. COLLINS CONTRACTING CO., INC.**

By   
 Chris Woodward  
 Vice President



**Gehring Construction & Ready Mix Co., Inc**  
 Mailing address: 5424 West Meadow Dr.  
 Columbus, NE. 68601  
 Toll Free 1-800-658-4056 Fax 402-564-4478  
 www.gehringconcrete.com  
 Columbus Plant: 4979 Howard Blvd, 402-564-2841  
 Humphrey Plant: 400-5th Ave, 402-923-1080



Proposal To; David City  
 Job Reference; N 5th Street Repair  
 Date; 6/6/2023

| Item No. | DESCRIPTION                | Qty  | Unit | Unit Price | Total        |
|----------|----------------------------|------|------|------------|--------------|
| 1        | Remove brick & salvage     | 1100 | SY   | 8.00       | 8,800.00     |
| 2        | Remove concrete            | 1100 | SY   | 12.00      | 13,200.00    |
| 3        | Subgrade prep              | 1100 | SY   | 2.00       | 2,200.00     |
| 4        | 8" Paving                  | 1100 | SY   | 75.00      | 82,500.00    |
| 5        | 8" Driveways               | 50   | SY   | 75.00      | 3,750.00     |
| 6        | Final grading and backfill | 1    | LS   | 2,500.00   | 2,500.00     |
|          |                            |      |      |            |              |
|          |                            |      |      | Total      | \$112,950.00 |

Notes

Use existing curb inlets in place  
 No seeding included

|       |       |  |
|-------|-------|--|
| Co.   | _____ | Co. Gehring Construction & Ready Mix Co. |
| By    | _____ | By Kevin Gehring                         |
| Title | _____ | Title Vice President                     |
| Date  | _____ | Date 6/6/23                              |

Council member Pat Meysenburg made a motion to pass and adopt Resolution No. 24-2023 approving the Butler County Parade Committee's request for the parade to cross Highway 15 on "L" Street on Sunday, July 16, 2023 in accordance with LB589. Council Member Bruce Meysenburg seconded the motion. The motion carried.  
 Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
 Yea: 6, Nay: 0

**RESOLUTION NO. 24-2023**

WHEREAS, the Butler County Fair's Annual parade is scheduled for July 16, 2023, and

WHEREAS, the Butler County Parade Committee has designated 2:00 p.m. to 7 p.m. to allow for set-up and clean-up, with the parade beginning at 5:00 p.m., and

WHEREAS, the Butler County Parade Committee has requested that Highway 15, at the intersection of "L" Street and Highway 15, be closed so the parade can cross Highway 15,

WHEREAS, the Mayor and Council acknowledge Revised Statutes Chapter 39-1359, Rights-of way; inviolate for state and Department of Roads purposes; temporary use for special events; conditions; notice; Political Subdivisions Tort Claims Act; applicable, which states:

- (1) The rights-of way acquired by the department shall be held inviolate for state highway and departmental purposes and no physical or functional encroachments, structures, or uses shall be permitted within such right-of-way limits, except by written consent of the department or as otherwise provided in subsections (2) and (3) of this section.
- (2) A temporary use of the state highway system, other than a freeway, by a city including full and partial lane closures, shall be allowed for special events, as designated by a city, under the following conditions:
  - (a) The roadway is located within the official corporate limits or zoning jurisdiction of the city;
  - (b) A city making use of the state highway system for a special event shall have the legal duty to protect the highway property from any damage that may occur arising out of the special event and the state shall not have any such duty during the time the city is in control of the property as specified in the notice provided pursuant to subsection (3) of this section, and
  - (c) Any existing statutory or common law duty of the state to protect the public from damage, injury, or death shall become the duty of the city making use of the state highway system for the special event, and the state shall not have such statutory or common law duty during the time the city is in control of the property as specified in the notice provided pursuant to subsection (3) of this section, and
  - (d) The city using the state highway system for a special event shall formally, by official governing body action, acknowledge that it accepts the duties set out in this subsection and, if a claim is made against the state, shall indemnify, defend, and hold harmless the state from all claims, demands, actions, damages, and liability, including reasonable attorney's fees, that may arise as a result of the special event.
- (3) If a city has met the requirements of subsection (2) of this section for holding a special event and has provided thirty days' advance written notice of the special event to the department, the city may proceed with its temporary use of the state highway system. The notice shall specify the date and time the city will assume control of the state highway property and relinquish control of such state highway property to the state.



- (4) The Political Subdivisions Tort Claims Act shall apply to any claim arising during the time specified in a notice provided by a political subdivision pursuant to subsection (3) of this section.

WHEREAS, the City of David City wishes to support this annual event, and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the City Clerk is hereby authorized to forward this resolution to the State of Nebraska Department of Roads for the closing of Highway 15 and "L" Street, from 2:00 p.m. to 7:00 p.m. for the parade to be held on Sunday, July 16, 2023 in David City, Nebraska.

Passed and adopted this 14<sup>th</sup> day of June, 2023.

---

Mayor Jessica J. Miller

---

City Clerk Tami L. Comte

Council member Pat Meysenburg made a motion to appoint John Kobus as the Water Supervisor. Council Member Keith Marvin seconded the motion. The motion carried.  
Jim Angell: Yea, Tom Kobus: Abstain (With Conflict), Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 5, Nay: 0, Abstain (With Conflict): 1

Mayor Miller stated that the next item on the agenda was discussion/action combining utility easements with the Northwest Drainage easement for Northland Subdivision.

The utility easement that was proposed and the Northwest Drainage easements were discussed. It was determined that a new plat will be needed and must go through the Planning Commission and the City Council as a replat. Special Projects Coordinator Dana Trowbridge asked if those meeting could be expedited in the interest of selling lots in Northland Subdivision. Olsson's will be asked to do the replat since they completed the original plat.



Council member Keith Marvin made a motion to approve the appointment of a Sidewalk Committee consisting of Council Members Kevin Woita and Pat Meysenburg, Interim City Administrator Tami Comte, Building Inspector Gary Meister and Beth Klosterman. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat

Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

Interim City Administrator Tami Comte stated that when the Metlife renewals came in for Life, AD & D and Long-Term Disability that there was going to be a fourteen percent increase in the premium. Comte stated that she called Jones Group, who is the agent of record, and asked for premiums from them.

The following is the illustration provided by Jones Group.

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Illustration prepared by



**CITY OF DAVID CITY**  
 Group Life Plan Considerations  
 Effective 6/1/2023

| LIFE & AD&D                                   | Current   |            | Renewal   |            |
|---|-----------|------------|-----------|------------|
|   | MetLife   | MetLife    | Principal | Lincoln FG |
| <i>*Rates for 100% employer paid premium*</i> |           |            |           |            |
| LIFE/AD&D BENEFIT                             | \$15,000  | \$15,000   | \$15,000  | \$15,000   |
| Age 65  | -35%      | -35%       | -35%      | -35%       |
| Age 70  | -50%      | -50%       | -50%      | -50%       |
| Age 75  | N/A       | N/A        | N/A       | N/A        |
| <b>LIFE/AD&amp;D RATES</b>                    |           |            |           |            |
| Life rate per \$1000                          | \$0.190   | \$0.222    | \$0.182   | \$0.195    |
| AD&D rate per \$1000                          | \$0.028   | \$0.028    | \$0.036   | \$0.028    |
| Volume  | \$369,750 | \$369,750  | \$369,750 | \$369,750  |
| Life premium                                  | \$70.25   | \$82.08    | \$67.29   | \$72.10    |
| AD&D premium                                  | \$10.35   | \$10.35    | \$13.31   | \$10.35    |
| Total Monthly Premium                         | \$80.61   | \$92.44    | \$80.61   | \$82.45    |
| Total Yearly Premium                          | \$967.27  | \$1,109.25 | \$967.27  | \$989.45   |
| Change from current                           |           | 14.68%     | 0.00%     | 2.29%      |

2-year rate  
 Voluntary Life available  
 for employees/dependents

3-year rate  
 Voluntary Life available  
 for employees/dependents

| Long Term Disability                  | Current                              |                                      | Renewal                              |                                      |
|---------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|
|                                       | MetLife                              | MetLife                              | Principal                            | Lincoln FG                           |
| Benefit max                           | \$5,000/month max                    | \$5,000/month max                    | \$5,000/month max                    | \$5,000/month max                    |
| Percentage of salary                  | 60%                                  | 60%                                  | 60%                                  | 60%                                  |
| Maximum period                        | SSNRA                                | SSNRA                                | SSNRA                                | Later of Age 65 or SSNRA             |
| Elimination period (accident/illness) | 90 days                              | 90 days                              | 90 days                              | 90 days                              |
| Preexisting Conditions                | 3 months prior,<br>12 months insured | 3 months prior,<br>12 months insured | 3 months prior,<br>12 months insured | 3 months prior,<br>12 months insured |
| Rate per \$100 of monthly benefit     | \$0.256                              | \$0.287                              | \$0.350                              | \$0.260                              |
| Covered Monthly Benefit               | \$128,325.00                         | \$128,325.00                         | \$128,325.00                         | \$128,325.00                         |
| Total Monthly Premium                 | \$328.51                             | \$368.29                             | \$449.14                             | \$333.65                             |
| Total Yearly Premium                  | \$3,942.14                           | \$4,419.51                           | \$5,389.65                           | \$4,003.74                           |
| Change from current                   |                                      | 12.11%                               | 36.72%                               | 1.56%                                |

2-year rate

3-year rate  
 STD available

| TWO PLAN TOTALS       | Current    | Renewal    |            |            |
|-----------------------|------------|------------|------------|------------|
| Total Monthly Premium | \$409.12   | \$460.73   | \$529.74   | \$416.10   |
| Total Yearly Premium  | \$4,909.41 | \$5,528.76 | \$6,356.92 | \$4,993.19 |
| Change from current   |            | 12.62%     | 29.48%     | 1.71%      |

2-year rate

3-year rate  
 Life and LTD must  
 be purchased together

Council member Keith Marvin made a motion to approve the quote of Lincoln FG for the employees Life, AD & D and Long-Term Disability insurance carrier. Council Member Kevin Woita seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat

Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

Council member Pat Meysenburg made a motion to approve Certificate of Payment #1 for IES Commercial in the amount of \$102,387.82 for the 2023 Industrial Parkway - Trowbridge Lane Electrical Extension. Council Member Kevin Woita seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat

Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

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**Contractor's Application for Payment**

|                    |  |                                  |           |
|--------------------|--|----------------------------------|-----------|
| <b>Owner:</b>      | City of David City   | <b>Owner's Project No.:</b>      |           |
| <b>Engineer:</b>   | JEO Consulting Group, Inc.                                   | <b>Engineer's Project No.:</b>   | 230325.00 |
| <b>Contractor:</b> | IES Commerical, Inc.   | <b>Contractor's Project No.:</b> | 555032006 |
| <b>Project:</b>    | 2023 Industrial Parkway-Trowbridge Lane Electrical Extension |                                  |           |
| <b>Contract:</b>   | 2023 Industrial Parkway-Trowbridge Lane Electrical Extension |                                  |           |

**Application No.:** 1                      **Application Date:** 5/31/2023  
**Application Period:** **From** 5/15/2023 **to** 5/26/2023

|  |               |
|--|---------------|
| 1. Original Contract Price   | \$ 601,106.58 |
| 2. Net change by Change Orders   | \$ -          |
| 3. Current Contract Price (Line 1 + Line 2)  | \$ 601,106.58 |
| 4. Total Work completed and materials stored to date<br>(Sum of Column G Lump Sum Total and Column J Unit Price Total) | \$ 113,764.24 |
| 5. Retainage   |               |
| a. 10% X \$ 113,764.24 Work Completed =  | \$ 11,376.42  |
| b. 10% X \$ - Stored Materials =   | \$ -          |
| c. Total Retainage (Line 5.a + Line 5.b)   | \$ 11,376.42  |
| 6. Amount eligible to date (Line 4 - Line 5.c)   | \$ 102,387.82 |
| 7. Less previous payments (Line 6 from prior application)  |               |
| 8. Amount due this application   | \$ 102,387.82 |
| 9. Balance to finish, including retainage (Line 3 - Line 4 + Line 5.c)   | \$ 498,718.76 |

**Contractor's Certification**

The undersigned Contractor certifies, to the best of its knowledge, the following:  
 (1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;  
 (2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such liens, security interest, or encumbrances); and  
 (3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

**Contractor:** Balo Pe IES Commercial Inc.  
**Signature:** Balo Pe                      **Date:** 5-31-23

|                                   |                          |
|-----------------------------------|--------------------------|
| <b>Recommended by Engineer</b>    | <b>Approved by Owner</b> |
| <b>By:</b> _____                  | <b>By:</b> _____         |
| <b>Title:</b> _____               | <b>Title:</b> _____      |
| <b>Date:</b> _____                | <b>Date:</b> _____       |
| <b>Approved by Funding Agency</b> |                          |
| <b>By:</b> _____                  | <b>By:</b> _____         |
| <b>Title:</b> _____               | <b>Title:</b> _____      |
| <b>Date:</b> _____                | <b>Date:</b> _____       |



Council member Bruce Meysenburg made a motion to approve the engineering services agreement with JEO for the "2023 Northland Subdivision Electrical Extension". Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0



**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of date signed by Owner between City of David City, Nebraska ("Owner") and JEO Consulting Group, Inc. ("Engineer").

Owner's project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

2023 Northland Subdivision Electrical Extension ("Project").

JEO Project Number: 230326.00

Owner and Engineer further agree as follows:

**ARTICLE 1 - SERVICES OF ENGINEER**

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**1.01 Scope**

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 - OWNER'S RESPONSIBILITIES**

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**2.01 Owner Responsibilities**

- A. Owner responsibilities are outlined in Section 3 of Exhibit B.

**ARTICLE 3 - COMPENSATION**

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**3.01 Compensation**

- A. Owner shall pay Engineer as set forth in Exhibit A and per the terms in Exhibit B.
- B. The fee for the Project is: See Exhibit A.
- C. The Standard Hourly Rates Schedule shall be adjusted annually (as of approximately January 1st) to reflect equitable changes in the compensation payable to Engineer. The current hourly rate schedule can be provided upon request.

**ARTICLE 4 - EXHIBITS AND SPECIAL PROVISIONS**

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**4.01 Exhibits**

Exhibit A – Scope of Services  
Exhibit B – General Conditions

**4.02 Total Agreement**

- A. This Agreement (consisting of pages 1 to 2 inclusive, together with the Exhibits identified as included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Owner: City of David City, Nebraska

Engineer: JEO Consulting Group, Inc.

By: \_\_\_\_\_

  
By: Matt E. Kalin

Title: \_\_\_\_\_

Title: Electrical Senior Project Manager

Date Signed: \_\_\_\_\_

Date Signed: June 9, 2023

Address for giving notices:

Address for giving notices:

City of David City, Nebraska

JEO Consulting Group, Inc.

490 "E" Street, PO Box 191

11213 Davenport Street, Suite 200

David City, NE 68632

Omaha, NE 68154



6/9/2023

2023 Northland Subdivision Electrical Extension  
David City, NE



SCOPE OF SERVICES:  
Exhibit A

**PROJECT DESCRIPTION:**

The City of David City, Nebraska (Owner) owns and operates a public electric system that serves the city residents and businesses. This is an electrical utility infrastructure extension project to support the Owner's Northland Subdivision north of East O Street between 5<sup>th</sup> and 7<sup>th</sup> Streets. It is expected that the Owner will furnish and install all materials for the project.

The work to be performed by the Engineer shall generally encompass and include the development of plans detailing the necessary work, services, materials, equipment and supplies necessary to complete the design of the project.

The electrical design by JEO will include the following:

- a. Electrical distribution system improvements.
- b. Roadway lighting. Roadway lighting will be conflict/intersection roadway lighting only.

**1 ENGINEERING SERVICES:**

**1.1 Electrical Distribution Design:**

- 1.1.1 Provide project management oversight over all facets and phases of the project.
- 1.1.2 Facilitate and attend Initial/Kick-off Meeting with Owner. Meeting will review the scope, schedule, and project requirements. The Engineer will also ask for any specific requirements or concerns from the Owner about the project. (One virtual meeting)
- 1.1.3 Utilize Olsson's final plat and 'Northland Subdivision Infrastructure Improvements' plan set signed/sealed September 12, 2022, as background(s) to depict lot line(s), easement(s), right-of-way(s), sanitary sewer, storm sewer, and water infrastructure.
- 1.1.4 Calculate the transformer size(s) and coordinate with Owner to determine the size(s) of transformers available or currently on order for utilization within the design..
- 1.1.5 Develop 30% conceptual drawings to depict approx. new equipment location(s) for one design option.
- 1.1.6 Facilitate a meeting with Owner to review equipment location(s) and proposed project alignment routing. (One virtual meeting)
- 1.1.7 Prepare a set of 60% complete preliminary drawings. Drawings will include site plans, power plans, demolition plans, and details as necessary.
- 1.1.8 Develop preliminary staking sheets and standard details.
- 1.1.9 Perform an internal quality assurance and quality control (QA/QC) review of the preliminary design and incorporate comments.
- 1.1.10 Facilitate a meeting with Owner to review 60% complete documents. (One virtual meeting)
- 1.1.11 Revise design plans following receipt of Preliminary Design review comments from Owner or Owner's representatives.

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- 1.1.12 Conduct an internal 90% QA/QC review of the plans and specifications.
- 1.1.13 Conduct a 90% review of the project plans with Owner. (One virtual meeting)
- 1.1.14 Create final plan set and sign and seal by an engineer registered in the State of Nebraska.
- 1.1.15 Deliver 100% complete design documents for the project (Plans) to the Owner electronically along with two hard copies for construction.

**1.2 Lighting Design:**

- 1.2.1 Coordinate with Owner for materials to be utilized for light poles, luminaires, and wiring methods.
- 1.2.2 Verify roadway functional classification with Nebraska Department of Transportation (NDOT).
- 1.2.3 Determine illumination levels per IES RP-8-2021 and AASHTO GL-7-2018.
- 1.2.4 Design roadway lighting and prepare photometric analysis.
- 1.2.5 Circuit the light poles.
- 1.2.6 Run a voltage drop analysis and adjust wiring as necessary.
- 1.2.7 Perform an internal QA/QC review of the design.
- 1.2.8 Furnish completed 60% design plans to Owner for review.
- 1.2.9 Incorporate any comments from the Owner.
- 1.2.10 Perform an internal QA/QC review of the design.
- 1.2.11 Prepare 90% complete design plans for the project.
- 1.2.12 Furnish completed 90% design plans to Owner for final review.
- 1.2.13 Incorporate any comments or revisions and provide 100% completed design of electrical plans sealed by a registered engineer in the State of Nebraska.

**2 OWNER RESPONSIBILITIES**

- 2.1 Provide assistance with request to Olsson for the final plat and 'Northland Subdivision Infrastructure Improvements' plan set signed/sealed September 12, 2022 in AutoCAD format.
- 2.2 The Owner must provide access to all properties where proposed improvements will be placed, etc.
- 2.3 Provide a room/location for all meetings throughout the project.
- 2.4 Provide timely review of documents or requests for information.
- 2.5 Submittal of drawings to regulatory agencies.
- 2.6 Provide preferred light poles, mounting arms, luminaires, light circuiting conductors and raceways.

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**3 FEE**

3.1 JEO proposes to provide the services defined above for the lump sum fees defined below:

| <u>Task:</u>                                | <u>Fee</u>   |
|---|--------------|
| Electrical Distribution and Lighting Design | \$ 18,000.00 |
| Total                                       | \$ 18,000.00 |

3.2 Reimbursable Expenses.

3.2.1 Typical reimbursable expenses are included in the lump-sum and cover: mileage for trips required to complete the work defined above, long-distance phone calls, meals, other travel expenses, software, copies/prints, and faxes.

3.2.2 Other reimbursable expenses shall be billed at 110% of their cost. None are anticipated on this project.

**4 PROGRESS PAYMENTS**

4.1 JEO will bill for services completed near the end of each month. All invoices are due payable upon receipt and are considered delinquent after 30 days.

4.2 Invoices not paid within 30 days may be charged interest at the annual rate of 12% (1.0%/month).

**5 CONTRACT TIME**

5.1 JEO will work as expeditiously as possible, pending authorization from Owner to complete the tasks in this project.

5.2 Design Phase:

5.2.1 Electrical Distribution Design: 45 working days from authorization to proceed.

5.2.2 Lighting Design: 45 working days from receipt of authorization to proceed and lighting materials.

**6 EXCLUSIONS**

6.1 Topographic survey of land not identified previously within the Scope of Services.

6.2 Land rights and ownership.

6.3 Boundary surveys and/or legal descriptions of easements or any land acquisitions.

6.4 Preparation of any applications, permits, attendance at meetings or other requirements for Nebraska Department of Transportation, Butler County or other regulatory commission(s) or agency(s), not included previously in this Scope of Services.

6.5 Design services for a lightning protection system.

6.6 Bidding and negotiation services.

6.7 Construction administration services.

6.8 Shop drawing review of equipment quotes.

6.9 Attendance at Owner's council meetings, other than those meetings identified previously in this Scope of Services.

6.10 Geotechnical investigation of subsurface soils conditions.

6.11 Floodplain, Corps 404, or other environmental permitting.

6.12 Environmental remediation actions, plans, permits, etc.

6.13 Any permit fees associated with permit applications.

6.14 Field observation for compliance with plans and specifications on a routine basis (daily/weekly/monthly).

## JEO CONSULTING GROUP INC ☐ JEO ARCHITECTURE INC

**1. SCOPE OF SERVICES:** JEO Consulting Group, Inc. (JEO) shall perform the services described in Exhibit A. JEO shall invoice the owner for these services at the fee stated in Exhibit A.

**2. ADDITIONAL SERVICES:** JEO can perform work beyond the scope of services, as additional services, for a negotiated fee or at fee schedule rates.

**3. OWNER RESPONSIBILITIES:** The owner shall provide all criteria and full information as to the owner's requirements for the project; designate and identify in writing a person to act with authority on the owner's behalf in respect to all aspects of the project; examine and respond promptly to JEO's submissions; and give prompt written notice to JEO whenever the owner observes or otherwise becomes aware of any defect in work.

Unless otherwise agreed, the owner shall furnish JEO with right-of-access to the site in order to conduct the scope of services. Unless otherwise agreed, the owner shall also secure all necessary permits, approvals, licenses, consents, and property descriptions necessary to the performance of the services hereunder. While JEO shall take reasonable precautions to minimize damage to the property, it is understood by the owner that in the normal course of work some damage may occur, the restoration of which is not a part of this agreement.

**4. TIMES FOR RENDERING SERVICES:** JEO's services and compensation under this agreement have been agreed to in anticipation of the orderly and continuous progress of the project through completion. Unless specific periods of time or specific dates for providing services are specified in the scope of services, JEO's obligation to render services hereunder shall be for a period which may reasonably be required for the completion of said services.

If specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or date are changed through no fault of JEO, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If the owner has requested changes in the scope, extent, or character of the project, the time of performance of JEO's services shall be adjusted equitably.

**5. INVOICES:** JEO shall submit invoices to the owner monthly for services provided to date and a final bill upon completion of services. Invoices are due and payable within 30 days of receipt. Invoices are considered past due after 30 days. Owner agrees to pay a finance charge on past due invoices at the rate of 1.0% per month, or the maximum rate of interest permitted by law.

If the owner fails to make any payment due to JEO for services and expenses within 30 days after receipt of JEO's statement, JEO may, after giving 7 days' written notice to the owner, suspend services to the owner under this agreement until JEO has been paid in full all amounts due for services, expenses, and charges.

**6. STANDARD OF CARE:** The standard of care for all services performed or furnished by JEO under the agreement

shall be the care and skill ordinarily used by members of JEO's profession practicing under similar circumstances at the same time and in the same locality. JEO makes no warranties, express or implied, under this agreement or otherwise, in connection with JEO's services.

JEO shall be responsible for the technical accuracy of its services and documents resulting therefrom, and the owner shall not be responsible for discovering deficiencies therein. JEO shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in owner furnished information.

**7. REUSE OF DOCUMENTS:** Reuse of any materials (including in part plans, specifications, drawings, reports, designs, computations, computer programs, data, estimates, surveys, other work items, etc.) by the owner on a future extension of this project, or any other project without JEO's written authorization shall be at the owner's risk and the owner agrees to indemnify and hold harmless JEO from all claims, damages, and expenses including attorney's fees arising out of such unauthorized use.

**8. ELECTRONIC FILES:** Copies of Documents that may be relied upon by the owner are limited to the printed copies (also known as hard copies) that are signed or sealed by JEO. Files in electronic media format of text, data, graphics, or of other types that are furnished by JEO to the owner are only for convenience of the owner. Any conclusion or information obtained or derived from such electronic files shall be at the user's sole risk.

a. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it shall perform acceptance tests or procedures within 30 days, after which the receiving party shall be deemed to have accepted the data thus transferred.

Any errors detected within the 30 day acceptance period shall be corrected by the party delivering the electronic files. JEO shall not be responsible to maintain documents stored in electronic media format after acceptance by the owner.

b. When transferring documents in electronic media format, JEO makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by JEO at the beginning of the project.

c. The owner may make and retain copies of documents for information and reference in connection with use on the project by the owner.

d. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

e. Any verification or adaptation of the documents by JEO for extensions of the project or for any other project shall entitle JEO to further compensation at rates to be agreed upon by the owner and JEO.

**9. SUBCONSULTANTS:** JEO may employ consultants as JEO deems necessary to assist in the performance of the services. JEO shall not be required to employ any consultant unacceptable to JEO.

**10. INDEMNIFICATION:** To the fullest extent permitted by law, JEO and the owner shall indemnify and hold each other



**JEO CONSULTING GROUP INC ☐ JEO ARCHITECTURE INC**

harmless and their respective officers, directors, partners, employees, and consultants from and against any and all claims, losses, damages, and expenses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) to the extent such claims, losses, damages, or expenses are caused by the indemnifying parties' negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of JEO and the owner, they shall be borne by each party in proportion to its negligence.

**11. INSURANCE:** JEO shall procure and maintain the following insurance during the performance of services under this agreement:

- a. Workers' Compensation: Statutory
- b. Employer's Liability
  - i. Each Accident: \$500,000
  - ii. Disease, Policy Limit: \$500,000
  - iii. Disease, Each Employee: \$500,000
- c. General Liability
  - i. Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
  - ii. General Aggregate: \$2,000,000
- d. Auto Liability
  - i. Combined Single: \$1,000,000
- e. Excess or Umbrella Liability
  - i. Each Occurrence: \$1,000,000
  - ii. General Aggregate: \$1,000,000
- f. Professional Liability:
  - i. Each Occurrence: \$1,000,000
  - ii. General Aggregate: \$2,000,000
- g. All policies of property insurance shall contain provisions to the effect that JEO and JEO's consultants' interests are covered and that in the event of payment of any loss or damage the insurers shall have no rights of recovery against any of the insureds or additional insureds thereunder.
- h. The owner shall require the contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause JEO and JEO's consultants to be listed as additional insured with respect to such liability and other insurance purchased and maintained by the contractor for the project.
- i. The owner shall reimburse JEO for any additional limits or coverages that the owner requires for the project.

**12. TERMINATION:** This agreement may be terminated by either party upon 7 days prior written notice. In the event of termination, JEO shall be compensated by owner for all services performed up to and including the termination date. The effective date of termination may be set up to thirty (30) days later than otherwise provided to allow JEO to demobilize personnel and equipment from the site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble project materials in orderly files.

**13. GOVERNING LAW:** This agreement is to be governed by the law of the state in which the project is located.

**14. SUCCESSORS, ASSIGNS, AND BENEFICIARIES:** The owner and JEO each is hereby bound and the partners, successors, executors, administrators and legal representatives of the owner and JEO are hereby bound to the other party to this agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, with respect to all covenants, agreements and obligations of this agreement.

- a. Neither the owner nor JEO may assign, sublet, or transfer any rights under or interest (including, but without limitation, monies that are due or may become due) in this agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any duty or responsibility under this agreement.
- b. Unless expressly provided otherwise in this agreement: Nothing in this agreement shall be construed to create, impose, or give rise to any duty owed by the owner or JEO to any contractor, contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
- c. All duties and responsibilities undertaken pursuant to this agreement shall be for the sole and exclusive benefit of the owner and JEO and not for the benefit of any other party.

**15. PRECEDENCE:** These standards, terms, and conditions shall take precedence over any inconsistent or contradictory language contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding JEO's services.

**16. SEVERABILITY:** Any provision or part of the agreement held to be void or unenforceable shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the owner and JEO, who agree that the agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**17. NON-DISCRIMINATION CLAUSE:** Pursuant to Neb. Rev. Stat. § 73-102, the parties declare, promise, and warrant that they have and will continue to comply fully with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C.A § 1985, et seq.) and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. § 48-1101, et seq., in that there shall be no discrimination against any employee who is employed in the performance of this agreement, or against any applicant for such employment, because of age, color, national origin, race, religion, creed, disability or sex.

**18. E-VERIFY:** JEO shall register with and use the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986, to determine the work eligibility status of new employees physically performing services within the state where the work shall be performed. Engineer shall require the same of each consultant.

Council member Keith Marvin made a motion to approve the bid of Woolsey Electric for the electrical construction at the RV Campground. Council Member Tom Kobus seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0



**Bid Tabulation Form**  
City of David City, NE  
Campground Improvement - Electrical Package  
Bid Date: June 01, 2023, 3:00 PM Local Time



| Bid Form Item        | Bidders              |                       |
|----------------------|----------------------|-----------------------|
|                      | Woosley Electric LLC | Holloway Electric LLC |
| Contract Price Total | \$73,095.74          | \$130,195.04          |



# Bid Proposal

**David City Campground Improvements**

From: Holloway Electric LLC

Date: 6/01/2023

To: David City, City Council



We propose to furnish all material and perform all the labor necessary to furnish work for the David City Campground Improvements based on plans E1.1, E2.1, E2.2 and E2.3 from 11/17/2022 and Electrical Specifications Section 26 00 00 Revised 10/24/2022. All of the work for Base Bid shall be completed in a substantial and workman like manner based off of 2017 NEC Guidelines for the sum of **\$130,195.04**

Payments shall be made each thirty days as the work progresses. The entire amount of the contract shall be paid within thirty days after completion.

**Service and Finance Charges** are applicable on past due accounts at the rate of 1 ½ percent per month on amounts thirty (30) days past due, which is equal to an annual percentage rate of 18 percent. Such charges are shown as "service charge". There is no service charge if accounts are paid within thirty days of the end of the month in which purchases are made.

Any alteration or deviation from the above specifications involving extra cost of material and/or labor will only be executed upon written orders for same, and will become an extra charge over the sum mentioned in this contract. All agreements must be made in writing.

The contractor agrees to carry Workman's Compensation and Public Liability Insurance, also to pay all Sales Taxes, Old Age Benefit and Unemployment Compensation Taxes upon the material and labor furnished under this contract, as required by the United States Government and the State in which this work is performed.

Respectfully submitted,

Signed: Andrew Holloway

**Note:** This proposal may be withdrawn by us if not accepted within 60 days of proposal date.

**Acceptance**

You are hereby authorized to furnish all materials and labor required to complete the work mentioned in the above proposal, for which the undersigned agrees to pay the amount mentioned in said proposal, and according to the terms thereof. I also agree to pay all reasonable costs, charges and attorney's fees that may accrue hereon after any default in payments.

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ 20\_\_\_\_



WOOLSEY ELECTRIC LLC  
 1707 41st Rd  
 David City, NE 68632  
 (402) 539-2060  
 woolseychris1@hotmail.com

ADDRESS  
 City of David City  
 490 E St.  
 David City, NE 68632  
 c/o Brad Swerczek

Estimate 1235

DATE 05/31/2023

EXPIRATION DATE 06/25/2023

| ACTIVITY   | QTY | RATE      | AMOUNT    |
|--|-----|-----------|-----------|
| Electrical bid for the complete wiring of the "Campground Improvements project" for 21 camper hookups in western David City. Also includes wiring the lift station as stated on the print. | 1   | 73,095.74 | 73,095.74 |

TOTAL \$73,095.74

Accepted By

Accepted Date

Council member Tom Kobus made a motion to approve O'Dell Concrete and Construction for the concrete pads at the RV Campground. Council Member Keith Marvin seconded the motion. The motion carried.  
 Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
 Yea: 6, Nay: 0



**Bid Tabulation Form**  
 City of David City, NE  
**Campground Improvement - Concrete Package**  
 Bid Date: June 13, 2023, 3:00 PM Local Time



| Bid Form Item               | Bidders                          |                                     |                            |
|-----------------------------|----------------------------------|-------------------------------------|----------------------------|
|                             | O'Dell Concrete and Construction | Butler County Concrete & Design LLC | Ratkovec Construction, LLC |
| <b>Contract Price Total</b> | <b>\$142,496.00</b>              | <b>\$219,475.00</b>                 | <b>\$362,770.06</b>        |

Notes: All bids have confirmed receipt of Addendum No. 01 issued 6/12/2023  
 All bids include pipe bollards and concrete wheelstops



## Estimate

|           |            |
|-----------|------------|
| Date      | Estimate # |
| 6/13/2023 | 555        |

|                    |
|--------------------|
| Name / Address     |
| CITY OF DAVID CITY |

|         |
|---------|
| Project |
|         |

| Description  | Total      |
|--|------------|
| CONCRETE CAMPER PADS; 12" OF SUB-BASE TO BE CRUSHED CONCRETE, 20 CAMPER PADS 16X60', ONE ADA PAD 20X60', TO BE POURED 6" THICK, 20 PICNIC PADS 15X20', 1 ADA PICNIC PAD 20X30' TO BE POURED 6", 20 HOOKUP PADS 4X6', 1 ADA PICNIC PAD 4X10' TO BE 6" THICK, EXPANSION CUTS PER PLANS, #3 REBAR TO BE PLACED THROUGH ALL PAD 3' ON CENTERS 3" FROM BOTTOM GRADE | 339,797.23 |
| INSTALL 21 BOLLARDS PER PLANS, PAINTED PER PLANS   | 11,258.98  |
| INSTALL 21 CAR STOPS, SECURE WITH REBAR  | 11,713.85  |
| ALL PADS TO BE BROOM FINISHED, 47B MIXTURES WITH A MINIMUM 3500 PSI PADS WILL BE BACKFILLED AND GRADED TO DRAIN PADS TO BE 3" LOWER THAN HUB   |            |

ESTIMATE PRICES ARE SUBJECT TO CHANGE. 50% DOWN PAYMENT REQUIRED 30 DAYS PRIOR TO START DATE.  
 \*\* THIS ESTIMATE EXPIRES IN 7 DAYS

**Total** \$362,770.06

RATKOVEC CONSTRUCTION  
 Phone: 402-367-8693  
 Email: cole.ratkovec@gmail.com

**Butler County Concrete & Design LLC**  
Jason Campbell  
1214 B St  
David City, NE 68632  
402-367-9517

**Estimate**

**Date** 6/12/23

**Description**

David City RV  
Campground Pads

Per updated specs dated June 12, 2023 per Dave Henke

19- # 1. Standard RV Pads w Bollards and parking stops

- Per updated specs
- 6" thick 47B 3,500 psi
- 3" Below hubs and final grade
- 3' or less rebar cage/ #3 rebar

2- #2 ADA Accessible RV Pad w Bollards and parking stops

- Per updated specs
- 6" thick 47B 3,500 psi
- 3" Below hubs and final grade
- 3' or less rebar cage/ #3 rebar

Includes material, labor, and clean up/ final grade around pads

---

**Total**

**\$ 219,475.00**

Home Ph. (402) 542-2160  
Cell Ph. (402) 432-1369

# O'DELL

SHANE O'DELL  
P.O. Box 113  
Rising City, NE 68658

## CONCRETE and CONSTRUCTION

Performing all types of Concrete Construction  
*Specializing in Textured Concrete*

### BID PROPOSAL

JOB NAME & LOCATION:

DATE 6-13-23

**MATERIALS:**

19-16'x60'x6" RU Peds  
2-20'x60'x6" RU Peds  
19-20'x15'x5" Patios  
2-30'x20'x5" Patios  
47B Concrete  
Rebar on 3' Centers

**LABOR:**

Form, Pour, Finish  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
# 139,696.

We propose hereby to furnish material and labor-complete in accordance with above specifications, for the total sum of: \$ \_\_\_\_\_.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. Owner to carry fire, tornado and other necessary insurance.

#### Acceptance of Proposal:

Signature \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

A service charge of 1.5% per month will be applied to all past due balances.

Interim City Administrator Tami Comte stated that she had gotten some quotes for picnic tables and campfire rings for the RV Campground, but she didn't know if the Council wanted to use wooden or galvanized picnic tables.

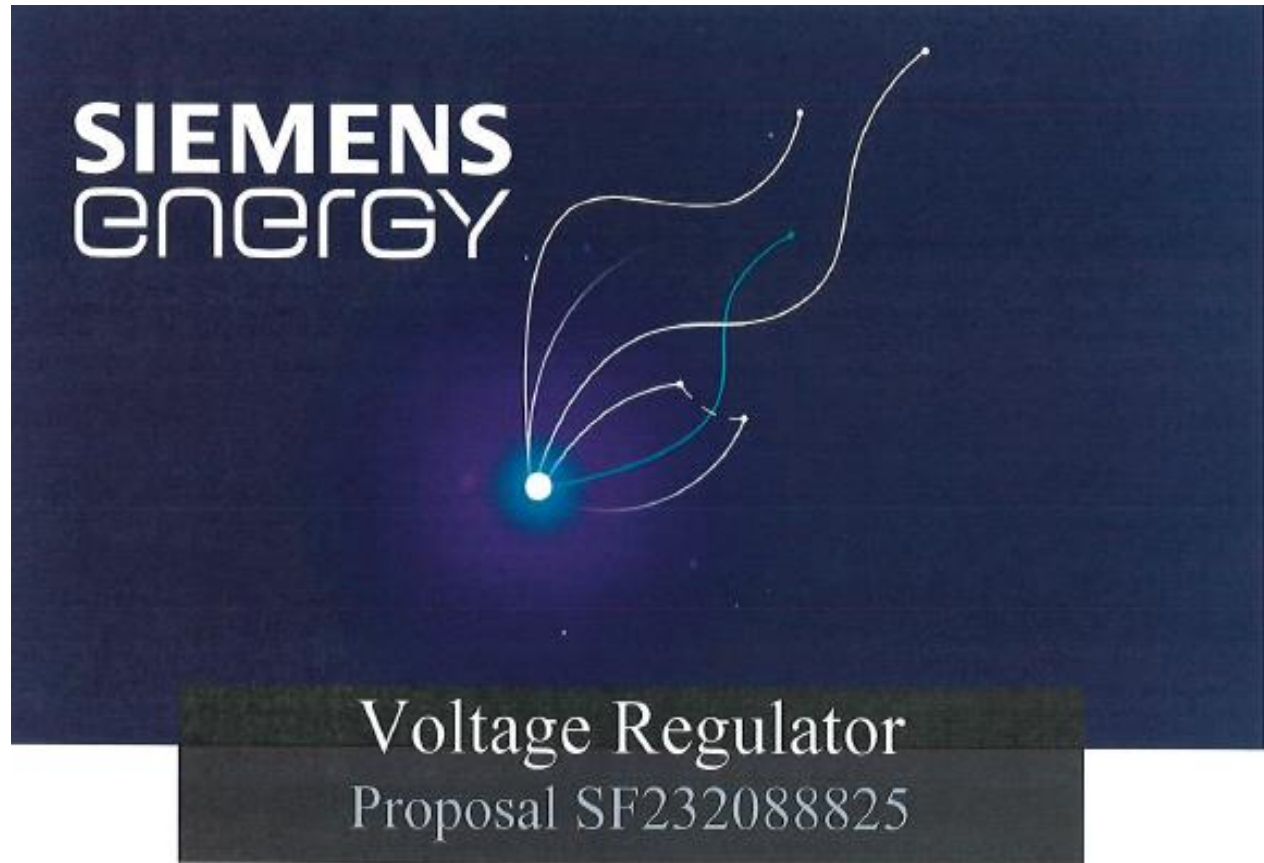
Council member Kevin Woita made a motion to table the quotes for the picnic tables and campfire rings for the RV Campground. Council Member Keith Marvin seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Council member Bruce Meysenburg made a motion to approve the quote of Siemens Energy for a Voltage Regulator and authorize Mayor Miller to sign the agreement. Council Member Keith Marvin seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

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June 1, 2023

City of David City



**Presented by:**  
Michael Robertson  
Application Engineer VR  
Tel: +1 (601) 201-0981  
Michael.robertson@siemens-energy.com

Siemens Energy, Inc.  
444 Hwy 49 South  
Richland, MS 39128

Unrestricted

Siemens Proposal SF232088625

June 1, 2023

## Proposal

**To (Purchaser):** City of David City

**Ref:** Voltage Regulators

Siemens Energy, Inc. (Siemens) agrees to sell to Purchaser and Purchaser agrees to purchase from Company the goods described below. All pricing is in USD

|               |  | Qty | Product | Price     | Ext Total |
|---------------|--|-----|---------|-----------|-----------|
| <b>Item 1</b> | <b>Three <math>\Phi</math> Voltage Regulator</b> | 1   | SFR     | \$357,695 | \$357,695 |

**Description:**

Voltage regulators by Siemens Energy to provide +/-10% voltage regulation in 32 steps of 0.625% each. Catalog # 40-34.5-1500 Rated 1500 kVA, 34500 Volts, 251 Amps, 200 kV BIL, 55/65°C, 60Hz, ANSI type "A", Class ONAN. Manufactured and tested per IEEE C57.15.

SIEMENS MJ-4A with RS 232/485 & Fiber  
Factory connected at Contract Review Data Volts  
Please see attached datasheet for the confirmation of design



## Comments and Exceptions

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- 1) Siemens Energy regulators are manufactured and tested as per ANSI C57.15
- 2) The proposed regulator is based on Siemens Energy standard design. No consideration was given to the provided specification requirements.

## Commercial Terms

**TERMS OF PAYMENT:** Net 30 days after shipment. (Subject to credit approval)

**SHIPPING DATE:** Lead times are currently 59-63 weeks ExWorks from receipt of order by Siemens Energy. Actual Shipping estimates shall be confirmed by Siemens Energy order acknowledgement document based on technically and commercially clear order entered in the Siemens Energy system.

**DELIVERY TERMS:** FOB Destination (Contiguous United States), Freight Allowed.

**PRICE POLICY CLAUSE:** Prices are firm for quoted shipment provided that the unit price as evaluated by Formula 1 and defined in Table 1 below do not vary by more than  $\pm 15\%$ . The base price (bs) for Formula 1 will be established in the month in which the proposal was provided. The price for the period of indexation (n) will be established based upon the 3-month average values prior to shipment

**WARRANTY:** The Warranty period covers the equipment for twelve (12) months after in service date or eighteen (18) months after shipment, whichever expires first.

**CONDITIONS:** Standard Terms and Condition of sale for Siemens Energy Inc.

**CANCELLATION POLICY:**

Cancellation of Voltage Regulator equipment will be subject to cancellation charges based on below table

| Cancellation Schedule                                      | Percentage |
|--|------------|
| Order received and entered in Siemens Energy System        | 5%         |
| 4 Weeks after the Siemens Energy order acknowledgment date | 50%        |
| Scheduled to Ship in less than thirty (30) days            | 100%       |

Siemens Proposal SF232088825

June 1, 2023

**OTHER TERMS:**

This proposal will remain in effect for 30 days, unless changed in the interim upon written notice from Company. Documents and related correspondence shall be sent to the Company's office or an authorized Company Distributor.

Standard drawing package which includes outline, nameplate drawing, and control diagram shall be provided for approval approximately 15 weeks before the scheduled shipment of a technically and commercially clear order entered in the Siemens Energy system. Drawings need to be returned within 2 weeks' time frame in order to get the design completed in time. Otherwise, delivery of the units shall be affected.

This proposal is based upon the Company's interpretation of the plans and specification and is subject to correction for errors. This document and any other documents specifically referred to as being a party hereof constitutes the entire agreement on the subject matter, and it shall not be modified except in writing signed by both parties.

**Table 1**

| Cost Element                                | Description  | Source   | % Of Cost | Coefficient |
|---|--|--|-----------|-------------|
| Copper (CU)                                 | London Metal Exchange monthly cash offer price for copper                                    | <a href="#">LME Copper   London Metal Exchange</a>                         | 7.00%     | (a)         |
| Aluminum (AL)                               | London Metal Exchange monthly cash offer price for High Grade (HG) Aluminum                  | <a href="#">LME Aluminium   London Metal Exchange</a>                      | 5.00%     | (b)         |
| Mineral Oil (OI)                            | Spot prices for crude oil in dollars per barrel Europe Brent spot price FOB                  | <a href="#">Spot Prices for Crude Oil and Petroleum Products (eia.gov)</a> | 4.00%     | (c)         |
| GOES – Grain oriented electrical steel (CS) | T&D Europe GOES Conv. Monthly price  | Tdeurope.eu  | 15.00%    | (d)         |
| Steel (TS)                                  | CRU hot rolled coil USA domestic FOB Midwest monthly USD/cwt                                 | crugroup.com   | 19.00%    | (e)         |
| Controls (CT)                               | Open book purchaser price for third party controls   | Siemens Energy Inc   | 5.00%     | (f)         |
| Other (IP)                                  | WPUFD4131 – PPI for final demand NSA to reflect increases in transformations and fixed costs | <a href="#">Bureau of Labor Statistics Data (bls.gov)</a>                  | 45.00%    | (g)         |

**Formula 1:**

$$P_n = P_{bs} * [a \left(\frac{CU_n}{CU_{bs}}\right) + b \left(\frac{AL_n}{AL_{bs}}\right) + c \left(\frac{OI_n}{OI_{bs}}\right) + d \left(\frac{CS_n}{CS_{bs}}\right) + e \left(\frac{TS_n}{TS_{bs}}\right) + f \left(\frac{CT_n}{CT_{bs}}\right) + g \left(\frac{IP_n}{IP_{bs}}\right)]$$

Where:

P = Price

bs = a subscript meaning base (I.E. Base price of copper is CUbs)

n = a subscript indicating the period of indexation (I.E. the price of aluminum during the evaluation period is ALn)

Siemens Proposal SF232088825

June 1, 2023

Siemens Energy, Inc.  
SIEMENS STANDARD TERMS AND CONDITIONS OF SALE FOR PRODUCTS 30 September

*(For Sales in the USA, Excluding the State of Louisiana & International Sales)*

**These Terms and Conditions Govern  
the Sale of Equipment and Services**

The terms and conditions set forth in the Siemens proposal and these terms and conditions govern the Siemens proposal and any Agreement between the parties for the Equipment and/or Services covered by such proposal. Each proposal is valid for sixty (60) days from the date of the proposal unless extended or withdrawn in writing by Siemens. The issuance of a Purchaser purchase order or any other reasonable manner of acceptance by Purchaser communicated to Siemens during such validity period will form an Agreement based upon the terms and conditions of the Siemens proposal and these terms and conditions. The following order of precedence shall prevail: (i) an integrated agreement, if any, signed by Siemens and Purchaser; (ii) any change orders executed by the Parties; (iii) Siemens proposal; (iv) these terms and conditions; (v) Purchaser's purchase order (as accepted by Siemens and excluding those items noted in Article 1(b) below).

**1. Definitions**

Whenever used in this document with initial capitalization, the following definitions shall be applicable:

"ACM" as used herein shall mean Asbestos and Presumed Asbestos Containing Materials.

- (a) "Agreement" means the Siemens proposal, these terms and conditions, Purchaser's purchase order, as accepted by Siemens, (excluding any preprinted terms and conditions on said purchase order and in any attachments to or Purchaser documents referenced in said purchase order) or other document evidencing acceptance of the Siemens offer as set forth in the Siemens proposal, or an integrated agreement signed by Siemens and Purchaser, for the Equipment, and/or Services.
- (b) "Asbestos" shall have the meaning set forth in United States Code of Federal Regulations Chapter 29, Sections 1926.1101 et seq.
- (c) "Delivery" means delivery in accordance with the applicable delivery term stated in Article 5(a) below or, unless otherwise provided in the proposal.
- (d) "Equipment" means equipment, components, parts, materials and Software provided by Siemens pursuant to the Agreement.
- (e) "Field Installation Services" means the installation by Siemens of Purchaser's Material at the Site.
- (f) "Field Repair and Modernization Services" means the repair, modification or modernization work, or some or all of them, performed by Siemens on Purchaser's Material at the Site and for certain activities at a repair facility selected by Siemens.
- (g) "Hazardous Material" means any material listed in the "Hazardous Material Table" set forth in 49 CFR 172.101 as amended.
- (h) "Maintenance Services" means the disassembly, inspection and reassembly of Purchaser's Material at the Site.
- (i) "Nuclear Incident" shall have the meaning set forth in the Atomic Energy Act of 1954, 42 U.S.C. 2011, et seq., as amended.
- (j) "Party" means individually either Siemens or Purchaser.
- (k) "Parties" means collectively both Siemens and Purchaser.
- (l) "Presumed Asbestos Containing Material" shall have the meaning set forth in United States Code of Federal Regulations Chapter 29, Sections 1926.1101 et seq.
- (m) "Purchaser" means the entity purchasing Equipment and/or Services, as well as any other owners of the facility where the Equipment or Purchaser's Material is or will be situated.
- (n) "Purchaser's Material" means the equipment, materials, components and items of any kind owned by Purchaser or any other owner of the Site for which Services are to be provided or are provided under the Agreement.
- (o) "Resultant Data" means data or information that is generated or derived from or a result of any modification, adaptation, revision, translation, abridgement, condensation, compilation, evaluation, expansion or other recasting or processing of the Purchaser's data.
- (p) "Services" means Shop Repair and Modernization Services, Field Installation Services, Field Repair and Modernization Services, Maintenance Services, Training Services and Technical Services; or some or all of them provided by Siemens pursuant to the Agreement.
- (q) "Services on Third Party Parts" means Services in connection with Third Party Parts.
- (r) "Shop Repair and Modernization Services" means work performed by Siemens on Purchaser's Material at a Siemens manufacturing plant, a Siemens repair facility or another suitable facility selected by Siemens.
- (s) "Siemens" means Siemens Energy, Inc. or its affiliated companies and subsidiaries (including but not limited to Siemens Demag Delaval Turbomachinery, Inc., Dresser-Rand, Co.) as set forth in the Agreement, and their respective successors and assigns, and each of their partners, principals, shareholders, directors, officers, employees, and agents.
- (t) "Site" means the Purchaser's facility where the Equipment or Purchaser's Material is or will be situated.
- (u) "Special Services" means the performance by a Siemens field service representative of diagnostic and operational troubleshooting on Purchaser's Material, both online and offline. This work may be conducted on Site or by telecommunication.
- (v) "Software" means instructions in machine readable form, other than source code, and associated documentation delivered by Siemens to Purchaser in chip, disk and/or tape format.
- (w) "Subsupplier" means any subcontractor or supplier of any tier who supplies goods and services to Siemens in connection with the obligations of Siemens under the Agreement.
- (x) "Technical Field Advice" (sometimes referred to as Technical Field Assistance) means the advice and consultation given to Purchaser's personnel by a field service representative of Siemens with respect to:
- a. installation, inspection, repair and/or maintenance activities performed by others at the Site, and
  - b. any Siemens recommended quality assurance procedures for activities performed at the Site.
- (y) Technical Field Advice does not include management, supervision or regulation of Purchaser's personnel, agents or contractors.
- (z) "Technical Services" means (i) Technical Field Advice; (ii) Special Services; (iii) inspection of equipment which has been

Unrestricted

disassembled by Purchaser or others; (iv) technical evaluation of inspections performed by Siemens, Purchaser or others; (v) technical information provided by Siemens, including data interpretation and reports; (vi) inspections, technical evaluation of inspections, technical analysis of materials and technical recommendations related to Shop Repair and Modernization Services; (vii) advice and consultation given to Purchaser's personnel at the Site or at a Siemens facility by a Siemens engineer or technician; and/or (viii) advice and guidance given to Purchaser by Siemens field engineer(s) regarding methods and procedures for installation, maintenance and/or calibration of the Equipment or Purchaser's Material.

(aa) "Third Party Parts" means parts, components, equipment or materials provided by Purchaser under the Agreement or that exist in the Purchaser's Material which were not manufactured or supplied by Siemens or the predecessors of Siemens or which were originally supplied by Siemens or the predecessors of Siemens and subsequently repaired, serviced or otherwise modified or altered by any party not affiliated with Siemens or with a predecessor of Siemens.

(bb) "Training Services" means training and consultation services given to Purchaser's personnel or Purchaser subcontractor at the Site or at a Siemens facility by a Siemens trainer or technical advisor.

## 2. Scope

Siemens will furnish to Purchaser Equipment, and/or Services as specified in and pursuant to the Agreement.

## 3. Price Policy

Unless otherwise stated in the Siemens proposal, the price does not include unloading, disassembly and reassembly of Purchaser equipment or Equipment and/or installation of Software at the Site. The price for the Equipment and/or Services is set forth in the proposal, which amount shall be adjusted as expressly provided in the Agreement.

## 4. Terms of Payment

- A. Unless otherwise specified, Siemens shall issue invoices in accordance with the schedule set forth in the Siemens proposal. If an invoice schedule is not set forth in the Siemens proposal, Siemens shall issue invoices as the work is completed. In any event, all invoices shall be paid by Purchaser within thirty (30) days after the date of the invoice.
- B. In any instance where Purchaser is unable to return Equipment or components to Siemens for fitting or for coordination with other assemblies by the specific date agreed to in the Agreement or where a portion of the work is to be performed by Siemens at a later date, Siemens reserves the right to invoice Purchaser for work performed to date and either ship the components to Purchaser in their existing state or hold the components in storage at Purchaser's risk and expense. That portion of the work which is to be performed by Siemens at a later date will be performed as a Purchaser requested change under Article 18, Changes.
- C. If shipments are delayed by Purchaser, affected payments shall become due based on the date Siemens is prepared to make shipment.
- D. Any past due amounts shall, without prejudice to the right of Siemens to payment when due, bear interest at a floating rate equivalent to one-twelfth (1/12) of the per annum prime rate charged by JPMorgan Chase Bank, New York, New York, U.S.A., as such prime rate is published on the first banking day following the date payment is due, plus an additional one-half of one percent (0.5%), payable each month or portion thereof that payment is delayed. If payments are not made when due Siemens may, upon fifteen (15) days written notice and at its option, (i) terminate this Agreement (which termination shall be treated as a termination pursuant to Article 11(C), Termination) or (ii) suspend all further work hereunder. Resumption of work thereafter is contingent upon correction of the payment deficiency by Purchaser. The schedule for the resumed work will be established by Siemens based on its then current workload and the availability of other resources. All

Unrestricted

Siemens expenses associated with any such suspension shall be for the account of Purchaser.

- E. If a good faith dispute exists over the amounts to be paid, Purchaser shall notify Siemens in writing of such dispute and Purchaser shall pay the undisputed amount. The disputed portion may be held in abeyance until resolution of the dispute with the disputed portion, together with interest as specified in subsection D above, due thirty (30) days after said resolution.
- F. Unless otherwise set forth in the Siemens proposal, if shipment (from the manufacturing plant or repair facility where the work is performed) and/or Delivery of an item of the Equipment or completion of a portion of the Services is delayed for causes which are within the reasonable control of Siemens, issuance of the invoice covering the final five percent (5%) payment for the delayed work will be deferred for twice the number of months by which shipment/Delivery of such item of the Equipment or completion of such portion such Services is delayed; provided, however, that such deferral of the final invoice shall only be applicable if the delay in shipment and/or Delivery of the Equipment or the delay in completion of the Services has actually delayed the Purchaser's project for which the Equipment and/or Services were purchased.
- G. UNLESS OTHERWISE AGREED BY THE PARTIES EXPRESSLY IN THE AGREEMENT, THE REMEDIES OF PURCHASER SET FORTH ABOVE AND/OR IN THE SIEMENS PROPOSAL FOR DELAY IN SHIPMENT/DELIVERY OR COMPLETION OF SERVICES CAUSED BY SIEMENS ARE PURCHASER'S SOLE AND EXCLUSIVE REMEDIES AND NO OTHER REMEDIES OF ANY KIND WHATSOEVER SHALL APPLY. Deferral of the issuance of the final five percent (5%) invoice as set forth above or provision of the remedy set forth in the Siemens proposal shall constitute complete fulfillment of all liabilities of Siemens to Purchaser for delay in shipment/Delivery of Equipment or completion of Services whether based in contract, in tort (including negligence and strict liability), or any other theory of recovery. Further, the Parties agree that such deferral or any other option noted in Siemens's proposal are a reasonable determination of the damages that Purchaser would incur as a result of the delay in Delivery of the Equipment or in completion of the Services and do not constitute a penalty.
5. **Delivery, Title and Risk of Loss or Damage**
- A. Unless otherwise stated in the Siemens proposal, delivery of each component of Equipment shall be made FCA (Incoterms 2020) at the manufacturing plant. Subject to the provisions of subsection B below, legal and equitable title and risk of loss or damage to each such component of the Equipment shall pass from Siemens to Purchaser upon Delivery. Upon Delivery, the Equipment shall be deemed accepted if Purchaser does not, in writing, reject such Delivery within forty-eight (48) hours.
- B. Title to and right of possession of any Software licensed hereunder, without legal process, shall remain with Siemens or its licensor, except that Purchaser shall have the right of possession and use of the Software provided hereunder for the terms of the corresponding license provided herein, so long as no breach of this Agreement has been made by Purchaser and all payments due Siemens have been paid. Nothing in this Agreement shall be construed as giving Purchaser any right to sell, assign, lease or in any other manner transfer or encumber Siemens' or its licensor's ownership of the Software, or as limiting Siemens or its licensor from using and licensing the Software to any third party.
- C. Purchaser's Material sent to Siemens for Shop Repair and Modernization Services or Purchaser's Material or Equipment being returned pursuant to the provisions of the Warranty or Patents Articles of the Agreement will be delivered by Purchaser at its expense to the repair or manufacturing plant designated by Siemens where the work is to be performed. Title to such Equipment or Purchaser's Material will remain at all times with Purchaser. Risk of loss or damage to such Equipment or Purchaser's Material will transfer to Siemens upon its arrival on board the carrier at the repair or manufacturing plant and will transfer back to Purchaser upon its delivery to the carrier at the repair or manufacturing plant for return



to Purchaser. Delivery of Purchaser's Material shall be made when the item is placed on board carrier at the repair or manufacturing plant. When repair work is performed by Siemens at the Site, title and risk of loss or damage to the Equipment, to Purchaser's Material and to other property shall remain at all times with Purchaser. Title to any defective or nonconforming components of the Equipment that are replaced by Siemens, as part of its warranty obligations or as part of the Shop Repair and Modernization Services shall, at Siemens' option, revert back to Siemens upon completion of the replacement, with a deemed value of zero.

D. Risk of loss of or damage to Purchaser's Material or other property located at the Site shall remain with Purchaser at all times during the performance of work hereunder. If Purchaser procures or has procured property damage insurance applicable to occurrences at the Site, Purchaser shall obtain a waiver by the insurers of all subrogation rights against Siemens and its Subsuppliers.

#### 6. Transportation

A. Transportation and Storage: When items of Equipment are ready for shipment or Shop Repair and Modernization Services are completed on Purchaser's Material, Siemens will notify Purchaser to arrange for shipment. If Siemens has agreed in the Siemens proposal to transport Equipment, when items of Equipment are ready for shipment or Shop Repair and Modernization Services is completed on Purchaser's Material, Siemens will (i) in the absence of shipping instructions, inform Purchaser of pending shipment and Purchaser will thereafter promptly give shipping instructions to Siemens; (ii) determine the method of transportation and the routing of the shipment and (iii) ship the Equipment or Purchaser's Material freight prepaid and included in the price by Normal Carriage:

- (1) to Purchaser's designated destination when shipped by highway transport; or
- (2) to the nearest suitable rail siding to Purchaser's designated destination when shipped by rail transport.

In the event that Purchaser fails to provide Siemens with timely shipping instructions, Siemens will ship the Equipment or Purchaser's Material by Normal Carriage to Purchaser or to a suitable storage location selected by Siemens.

If the Equipment and/or Purchaser's Material is to be placed into storage in accordance with the above, Delivery of the Equipment or Purchaser's Material shall be deemed to have occurred for all purposes under the Agreement, including any payment due upon Delivery, at the time the Equipment or Purchaser's Material is placed on board the carrier for shipment to the storage location. If the Equipment and/or Purchaser's Material is to be stored in the facility where manufactured, or where Shop Repair and Modernization Services are performed, Delivery shall be deemed to have occurred when the Equipment and/or Purchaser's Material is placed into the storage location at such facility.

In the event of storage pursuant to the preceding paragraph, all expenses thereby incurred by Siemens, such as preparation for and placement into storage, handling, freight, storage, inspection, preservation, and taxes, shall be payable by Purchaser upon receipt of an invoice(s) from Siemens. When conditions permit and upon payment to Siemens of any additional amounts due hereunder, Purchaser shall arrange, at its expense, for removing the Equipment and/or Purchaser's Material from storage. Purchaser shall be responsible for insuring the Equipment and Purchaser's Material while in storage.

B. Normal Carriage: When Siemens is providing the transportation of the Equipment and/or Purchaser's Material, Siemens shall make every reasonable effort to ship by highway transport unless rail transport is required. Normal Carriage means carriage either by highway transport (provided this does not necessitate use of specialized riggers (trailers) or by rail transport, on normal routing from the repair facility or manufacturing plant to (i) Purchaser's designated destination when shipped by highway transport or (ii) the nearest accessible suitable rail siding to Purchaser's designated destination when shipped by rail transport or (iii) the port of export selected by Siemens

in the forty-eight (48) continental United States if Purchaser's designated destination is outside the United States or is in Alaska or Hawaii.

C. Special Transportation and Services: Purchaser agrees to pay or to reimburse Siemens for any transportation charges in excess of regular charges for Normal Carriage, including, but not limited to, excess charges for special routing, special trains, specialized riggers trailers, lightering, barging and air transport.

Purchaser also agrees to pay or to reimburse Siemens for any cost incurred or charge resulting from special services performed in connection with the transportation of the Equipment or Purchaser's Material, including, but not limited to, the construction and repair of transportation and handling facilities, bridges and roadways, of whatever kind and wherever located.

#### 7. Warranty

A. Equipment Warranty and Exclusive Remedy (excluding Software): Siemens warrants that each component of the Equipment (excluding Software and consumables) furnished to Purchaser will be free of defects in workmanship and materials until the earlier of eighteen (18) months after the Delivery of such component of the Equipment or one (1) year from the date of first use of such component of the Equipment (the "Equipment Warranty Period").

If during the Equipment Warranty Period (or the Warranty Repair Warranty Period per Article 7(H), if applicable), Siemens is promptly notified in writing that the Equipment or any component thereof fails to conform to the Equipment Warranty, Siemens will at its option and expense correct such nonconformity by repair or replacement.

B. Software Warranty and Exclusive Remedy: Siemens also warrants that the Software will comply with the functional specifications as set for in this Agreement until the earlier of eighteen (18) months after the Delivery of such Software or one (1) year from the date of first use of the Software (the "Software Warranty Period"). Siemens does not warrant that the Software will be error free or that Purchaser will experience uninterrupted performance.

If during the Software Warranty Period (or the Warranty Repair Warranty Period per Article 7(H), if applicable), Siemens is promptly notified in writing that the Software fails to conform to its warranty, and such failure is reproducible Siemens will at its option and expense correct the nonconformity by correction or deployment of an updated version, or patch in the medium originally supplied, or by providing a procedure to Purchaser for correction of the nonconformity. The obligations to provide software updates hereunder shall not include any obligation on Contractor to provide software upgrades without entitlement to a Change Order. Third party Software shall be warranted on a pass-through basis in the same manner and for the same period and extent provided to Siemens by the entity which supplied said third party software.

C. Field Installation Services, Field Repair and Modernization Services, Maintenance Services, and/or Shop Repair and Modernization Services Warranty and Exclusive Remedy: Siemens warrants that the work performed by Siemens on Purchaser's Material, including any materials (excluding consumables) supplied by Siemens in connection therewith (hereinafter in this subsection C referred to as the "Work"), will be free of defects in, workmanship and materials until one (1) year after the completion of such services (the "Field and Shop Repair and Modernization Services Warranty Period").

If during the Field and Shop Repair and Modernization Services Warranty Period (or the Warranty Repair Warranty Period per Article 7(H), if applicable), Siemens is promptly notified in writing that the Work or any part thereof fails to conform to the Field Installation Services, Field Repair and Modernization Services, Maintenance Services, and/or Shop Repair and Modernization Services Warranty, Siemens will at its option and expense correct such nonconformity by repair, replacement or reperformance of the defective portion of the Work. If repair, replacement or reperformance is impracticable, Siemens will refund the amount of the compensation paid to Siemens by Purchaser for such nonconforming portion of the Work.

D. Technical Services and Training Services Warranties and Exclusive Remedy: Siemens warrants for each item of Technical Services that (i) the advice, recommendations and performance of its personnel will reflect competent professional knowledge and judgment and (ii) the technical information, reports and analyses transmitted by Siemens in connection therewith will reflect competent professional knowledge and judgment, beginning with the start of the item of Technical Services and ending one (1) year after completion of said item of Technical Services by Siemens (the "Technical Services Warranty Period"). Siemens warrants that for each item of Training Services that such shall be performed in a professional and workmanlike manner beginning with the start of the item of Training Services and ending ninety (90) days after completion of said item of Training Services by Siemens.

If during the Technical Services Warranty Period or Training Services Warranty Period (or the Warranty Repair Warranty Period per Article 7(H), if applicable), Siemens is promptly notified in writing that any portion of the Technical Services fails to conform to the Technical Services Warranty, Siemens will promptly reperform such nonconforming portion of the Technical Services. If reperformance is impracticable Siemens will refund the amount of the compensation paid to Siemens for such nonconforming portion of the Technical Services.

E. Title: Siemens warrants that the Equipment, upon Delivery, shall not be subject to any encumbrances, liens, security interests, or other defects in title. In the event of any failure to conform to this warranty, Siemens, upon prompt written notice of such failure, shall defend the title to the Equipment.

F. Warranty Conditions: The warranties and remedies set forth in this Article are conditioned upon:

(1) Purchaser's receipt, handling, storage, installation, testing, operation and maintenance, including tasks incident thereto, of the Equipment, Purchaser's Material or Purchaser's equipment, in accordance with the recommendations of Siemens to the extent applicable or, in the absence of such recommendations or to the extent not applicable, in accordance with the generally accepted practices of the industry. In addition, such Equipment, Purchaser's Material or Purchaser's equipment shall not have been operated in excess of limitations specified in writing by Siemens and not have been subjected to accident, alteration, abuse or misuse.

(2) For all warranty work, Purchaser shall provide access to any operating and maintenance data as requested by Siemens, which may include broadband connection.

(3) For all warranty work where disassembly, removal, replacement and reinstallation of Equipment, materials, structures or Purchaser's Material was not part of the Siemens scope of work under the Agreement, Purchaser providing, without cost to Siemens, access to the nonconformity by disassembling, removing, replacing and reinstalling any Equipment, materials, structures or Purchaser's Material to the extent necessary to permit Siemens to perform its warranty obligations.

(4) All warranty work being performed on a single-shift straight-time basis, Monday through Friday. In the event Purchaser requests correction of warranty items on an overtime or multiple shift schedule, the premium portion of such overtime or multiple shift shall be to Purchaser's account.

(5) Purchaser, without cost to Siemens, making its Site facilities and personnel (to the extent consistent with personnel job classifications) available to assist Siemens in the performance of its warranty obligations.

(6) Purchaser, with respect to subsection 5 above, reimbursing Siemens for all costs incurred in the transportation of personnel and defective, repaired or replacement parts to and from the Site.

(7) Prior to the return of any Equipment or Purchaser's Material to Siemens, the Purchaser must obtain authorization and shipping instructions from Siemens. The Equipment or Purchaser's Material must

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be returned with complete identification in accordance with instructions furnished by Siemens. In no event will Siemens be responsible for Equipment or Purchaser's Material returned without proper authorization and identification. Siemens reserves the right to reject any unauthorized returns and/or Hazardous Material; and

(8) Siemens will have no warranty responsibility for any Software, or portion thereof, which has been modified or merged with another computer program without the prior written consent of Siemens to such modification or merger. Further, Purchaser shall indemnify, hold harmless and defend Siemens from any claims demands, suits, liabilities, judgments, losses, damages, costs or expenses (including reasonable legal fees, costs and charges) resulting from any unauthorized Software modifications,

(9) Siemens shall be entitled to issue updates, upgrades and/or changes to the Software solutions and applications or to provide functionally equivalent replacements during the term of this Agreement.

G. For the avoidance of doubt, in the event that physical loss or damage to the Purchaser's property results from the failure of a warranted defective portion of the Equipment or Services to conform to its respective warranty during the applicable warranty period, should Siemens have any liability at all, Siemens' liability shall in no case exceed Siemens' obligation to perform the warranty remedies specified in Article 7 subsections A, B, C, or D, as applicable, which Siemens would have had to perform if such warranty remedy had been carried out immediately following such failure but prior to the occurrence of the physical loss or damage.

H. The warranty period for any Services or Equipment (except Software) repaired or replaced by Siemens pursuant to this Article 7 shall not exceed the earlier of (i) twelve (12) months after the date of completion of the item of repaired, replaced or reperfomed Equipment or Services or (ii) six (6) months after the expiration of the original warranty period (the "Warranty Repair Warranty Period").

I. Additional Conditions Applicable to the Sale of Monitoring Devices: Monitoring devices supplied by Siemens pursuant to the Agreement may enable users to better diagnose and control conditions within the monitored equipment. While such monitors may permit earlier detection of harmful conditions, Siemens does not warrant or represent that the use of such monitors will prevent failure or detect all harmful conditions in the monitored equipment and Purchaser acknowledges the same.

J. Additional Conditions Applicable to Diagnostic and Non-Destructive Examination and Testing: Diagnostic and non-destructive examination and testing techniques employed by Siemens may not detect all of the defects in Purchaser's Material (including indications of cracking) and such failure shall not constitute a breach by Siemens of its warranty obligations. Purchaser acknowledges that Siemens will not be responsible for the consequences of undetected defects including undetected cracks.

K. Additional Conditions Applicable to Technical Field Advice: Where Siemens furnishes Technical Field Advice under the Agreement, Purchaser is responsible for (i) the supervision, management, regulation, arbitration and determination of the number of its personnel, agents, or contractors and their work and (ii) the planning, scheduling, management and progress of the work. Unless expressly agreed to in writing by Siemens, under no circumstances shall Siemens provide or be obligated to provide Technical Field Advice directly or indirectly to any competitor of Siemens or their employees, representatives, or consultants.

L. Additional Conditions Applicable to Remote Services: Where Siemens furnishes Services remotely under the Agreement, Siemens relies upon the proper and correct transmission of information from the Purchaser personnel. Prior to executing any advice given by Siemens remotely, the Purchaser personnel shall repeat the advice given. The Purchaser represents

and warrants that any user using a Siemens application for the Services provided under a Purchaser account or using Purchaser's log-in credentials duly acts on behalf of the Purchaser and accepts the terms of use which will be made accessible to such user, e.g. on the landing page of an application. The terms of use published on any landing page of an application shall apply in their then current version with respect to the use of the application. The Purchaser shall be responsible for the acts and omissions of any such user as if they were the Purchaser's own acts and omissions.

M. Siemens does not warrant or guarantee that any Equipment or Software will be secure from or protect against all cyber threats, hacking or similar malicious activity. Equipment or Software that is networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by Purchaser and owner/end-user against unauthorized access and for implementing product updates, and using the latest product versions, performing regular vulnerability scanning, implementing and maintaining appropriate password policy and using appropriate network security measures such as firewalls, network client authentication and/or network segmentation.

N. Exclusivity of Warranties and Remedies: THE WARRANTIES PROVIDED BY SIEMENS AS SET FORTH IN THIS ARTICLE ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS, OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE). Correction of nonconformities in the manner and for the period of time provided above constitute Siemens' sole and exclusive liability and Purchaser's sole and exclusive remedy for defective or nonconforming Equipment and/or Services whether claims of the Purchaser are based in contract, in tort (including negligence and strict liability), or any other theory of recovery.

#### 8. Taxes

The price paid or to be paid to Siemens under the Agreement does not include any federal, state, or local property, license, privilege, sales, use, excise, value added, gross receipts, or similar taxes (other than federal and state income taxes imposed on Siemens) now or hereafter applicable to, measured by, or imposed upon or with respect to the transaction, the Equipment and Purchaser's Material, its or their sale, their value or their use, or any Services performed in connection therewith. Purchaser agrees to defend, pay, and reimburse Siemens for any such taxes or costs, expenses, claims, liabilities, or losses including without limitations tax liabilities, penalties, and interest as a result of Purchaser's acts or omissions related to such taxes, which Siemens or its Subsuppliers are required to pay or are incurred by Siemens and its Subsuppliers. Should Purchaser be exempted from any such tax(es) it shall provide Siemens certification thereof within the earlier of thirty (30) days after the effective date of the Agreement or the time the exemption is obtained.

#### 9. Additional Conditions Applicable to Nuclear Installations

In the event the Services and/or the Equipment provided under the Agreement are to be performed or utilized at or in any manner in connection with a nuclear installation, the following conditions shall apply:

##### A. Purchaser Insurance

- (1) If Purchaser procures property damage insurance applicable to occurrences at the Site and third party non-nuclear liability insurance, or either of such types of insurance, such insurance will name Siemens and its Subsuppliers as additional insureds.
- (2) Purchaser shall have at its own cost, prior to the arrival of nuclear fuel at the Site, secured and shall thereafter maintain in force protection against liability arising out of or resulting from a Nuclear Incident as required by the Nuclear Regulatory Commission; provided, however, that if the nuclear liability protection system in effect on the date of the Agreement expires or is repealed, changed, or modified, Purchaser will, without cost to Siemens, maintain liability protection through government indemnity, limitation of liability, and/or liability insurance which will not result in a material impairment of the protection afforded Siemens and its

Subsuppliers by such nuclear liability protection system which is in effect as of the date of the Agreement, taking into account the availability of insurance, customary practice in the industry for plants of similar size and character, and other relevant factors in light of then existing conditions. In any event, the protection provided pursuant to this Article shall remain in effect until the decommissioning of the nuclear plant.

B. Waivers by Purchaser: Neither Siemens nor its Subsuppliers shall be liable for any loss of, damage to, or loss of use of property or equipment wherever located, arising out of or resulting from a "Nuclear Incident", as defined in the Atomic Energy Act. Purchaser waives and will require its insurers to waive all rights of recovery against Siemens and its Subsuppliers on account of any such loss, damage, or loss of use. All such waivers shall be full and unrestricted and in a form acceptable to Siemens, and will take precedent over any other clauses in the Agreement.

In the event Purchaser recovers damages from a third party based on losses at the Site resulting from the hazardous properties of source, special nuclear or byproduct material (as defined in the Atomic Energy Act of 1954, as amended), Purchaser shall defend, indemnify and hold Siemens and its Subsuppliers harmless against claims by such third party which are based on Purchaser's recovery of such damages. In addition, Purchaser waives and will require its insurers to waive all rights of recovery against Siemens and its Subsuppliers, for any and all costs or expenses arising out of or in connection with the investigation and settlement of claims or the defense of suits for damage resulting from the nuclear energy hazard.

C. Third Party Property Protection: Purchaser will indemnify and hold Siemens and its Subsuppliers harmless for any liability arising out of loss of or damage to property at the Site which arises out of a Nuclear Incident. In addition, Purchaser shall obtain for the benefit of Siemens and its Subsuppliers, protection against liability for, arising out of, or resulting from damage to any property or equipment located at the Site which is used or intended for use by Purchaser in connection with the operation of the nuclear power plant (including but not limited to fuel) and which is owned by parties other than Purchaser.

D. Decontamination: Purchaser shall, without cost to Siemens, perform any required decontamination and health physics necessary for, related to or resulting from Siemens performance of its contractual obligations. This includes but is not limited to decontamination of any Siemens equipment or tools used in the performance thereof. Purchaser shall provide documentation demonstrating that components or parts being returned to Siemens after such decontamination meet the requirements designated for unrestricted release as set forth in the United States Code of Federal Regulations, Title 10 Part 20.

#### 10. Force Majeure and Delays

A. Siemens will not be liable for failure to perform or delay in performance of any obligation resulting from or contributed to by any cause beyond the reasonable control of Siemens or its Subsuppliers or from any act of God; act of civil or military authority; act of war whether declared or undeclared; act (including but not limited to delay, failure to act or priority, governmental allocations or restrictions upon the use of transportation, materials or labor, public curfews, shelters in place, shut-ins, or lock-downs) of any governmental authority; act of terrorism or threat thereof; civil disturbance, rebellion, insurrection, riot or sabotage; fire, inclement weather conditions, earthquake, flood or natural disaster; strike, work stoppage or other labor difficulty; embargo, public health event, contagion, epidemic, pandemic (whether known or unknown) or quarantine; breakdown or unavailability of telecommunication networks; attacks on Siemens' or a Subsuppliers' digital infrastructure (such as malware, virus attacks, hacker attacks, or exploitation of vulnerabilities); railroad car, fuel or energy shortage; major equipment breakdown; delay or accident in shipping or transportation; or failure or delay beyond its reasonable control in obtaining necessary manufacturing facilities, labor, work permits or working visas for Siemens' personnel or its Subsuppliers' personnel, necessary import or export licenses, or materials from usual sources.



B. Additionally, Siemens will not be liable for failure to perform or delay in performance of any obligation resulting from or contributed to by the acts, omissions, neglect, delay or fault of parties outside of Siemens' control including, but not limited to, Purchaser and Purchaser's contractors, subcontractors, representatives or agents;

C. In the event of a delay in performance excusable under this Article, the date of Delivery or time for performance of the work will be extended by a period of time reasonably necessary to overcome the effect of such delay, and Purchaser will reimburse Siemens for its additional costs and expenses resulting from the delay.

#### **11. Termination**

A. Purchaser may terminate the Agreement for convenience upon thirty (30) days prior written notice to Siemens, subject to Purchaser's payment of Termination Charges. For purposes hereof, "Termination Charges" means either: (a) the applicable termination fee from the termination fee schedule set forth in the Siemens proposal; or (b) in the absence of a termination fee schedule, the portion of the purchase price for the work performed, man hours expended and materials acquired as of the date of termination plus the expenses associated with the termination, including, but not limited to, any additional expense incurred by reason of termination or cancellation of agreements between Siemens and its Subsuppliers, and any applicable cost allocated in contemplation of performance. The Parties agree that such Termination Charges, including termination fees set forth in the termination fee schedule, are a reasonable determination of the damages that Siemens would incur as a result of such termination and do not constitute a penalty. All Termination Charges shall be due and payable thirty (30) days from the date of the Siemens invoice.

B. Purchaser may terminate the Agreement for cause in the event of (i) an act of insolvency or bankruptcy by Siemens; or (ii) a material breach of the Agreement by Siemens, which Siemens fails to commence to cure within thirty (30) days after notice thereof from Purchaser and fails to diligently pursue thereafter. In such event, as Purchaser's sole remedy for such default, Siemens will reimburse Purchaser for its reasonable and verifiable costs to complete the Services or obtain replacement Equipment up to the price for such item of Equipment or Services under the Agreement.

C. In the event of any breach of the Agreement by Purchaser, Siemens shall be entitled to an extension of time to the extent necessitated by the breach and to reimbursement for all costs and expenses ("Breach Costs") incurred by Siemens as a result of such breach. Siemens may terminate the Agreement if (i) the work is delayed for a period in excess of six (6) months for any reason attributable to Purchaser and/or force majeure, (ii) any payment from Purchaser is thirty (30) days or more past due, or (iii) Purchaser materially breaches this Agreement. If Siemens terminates the Agreement pursuant to this Article 11.C, Purchaser shall pay Siemens the Termination Charges (as defined in Article 11.A) plus any Breach Costs within thirty (30) days from the date of the Siemens invoice.

D. In addition, if at any time during the performance of its work under the Agreement Siemens reasonably determines that the Purchaser's financial condition may render it insolvent or unable to make future payments under the Agreement, then Siemens shall be entitled to one or more of the following at Siemens' option: (i) adequate written assurances, supported by documentation, of Purchaser's ability to pay; (ii) payment in advance for any further work; (iii) future payments against an irrevocable Letter of Credit on terms, and from an issuing bank, acceptable to Siemens; (iv) other payment security or credit support mutually agreed by Purchaser and Siemens.

#### **12. Intellectual Property Infringement**

A. Siemens will, at its own expense, defend or at its option settle any suit or proceeding brought against Purchaser so far as based on an allegation that any Services on Purchaser's Material or the Equipment (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent, copyright or misappropriation of a third party's trade

secret, so long as Siemens is notified promptly in writing and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. Siemens will pay the damages and costs awarded in any suit or proceeding so defended. Siemens will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Services on Purchaser's Material or the Equipment, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement of any such United States patent, copyright or misappropriation of a third party's trade secret, or its use by Purchaser is enjoined, Siemens will, at its option and its own expense, either: (a) procure for Purchaser the right to continue using said Equipment or Purchaser's Material; (b) replace it with substantially equivalent non-infringing equipment; or (c) modify it so it becomes non-infringing.

B. Siemens will have no duty or obligation to Purchaser under this Article to the extent that the Services on Purchaser's Material or Equipment is (a) supplied according to Purchaser's design or instructions wherein compliance therewith has caused Siemens to deviate from its normal course of performance, (b) modified by Purchaser or its contractors after Delivery by Siemens, or (c) combined by Purchaser or its contractors with items not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Purchaser. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, Purchaser shall protect Siemens in the same manner and to the same extent that Siemens has agreed to protect Purchaser under the provisions of Article 12.A above.

C. THIS ARTICLE IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS, COPYRIGHTS OR TRADE SECRETS AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF AND OF ALL THE REMEDIES OF PURCHASER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS, COPYRIGHTS OR TRADE SECRETS. Compliance with this Article as provided herein shall constitute fulfillment of all liabilities of the parties under the Agreement with respect to patents, copyrights or trade secrets.

#### **13. Confidential Information**

A. Siemens may have a proprietary interest in information that is furnished pursuant to or in connection with the Agreement. Purchaser will keep in confidence and will not disclose any such information, or any of Siemens' intellectual property (including, but not limited to, any patents, copyrights or trade secrets), which is specifically designated as being confidential by Siemens or use any such information for other than the purpose for which it is supplied without the prior written permission of Siemens. The provisions of this paragraph shall not apply to information, notwithstanding any confidential designation thereof, which is known to Purchaser without any restriction as to disclosure or use at the time it is furnished, which is or becomes generally available to the public without breach of any confidentiality obligation of Purchaser, or which is received from a third party, including Purchaser's subsidiaries or affiliates, without limitation or restriction on said third party or Purchaser at the time of disclosure.

B. Siemens also has a proprietary interest in (i) its proposal and the Agreement and (ii) the processes and procedures used by its personnel in performance of the Agreement. Accordingly, the quotation, the Agreement and such processes and procedures shall not be disclosed or viewed in whole or in part by third parties without the prior written permission of Siemens.

C. Siemens also has a proprietary interest in the manner of performance of the work, including but not limited to the know-how, processes, methods and techniques employed by Siemens in connection therewith. The observing or recording of the work or any part thereof, whether by photographic, video or audio devices or in any other manner is prohibited. In the event any such prohibited observation or recording occurs, any and all copies of any such recording(s) shall be turned over to Siemens for

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destruction by Siemens. Siemens may (in addition to any other legal or equitable rights and remedies) stop the work until Siemens has satisfied itself that the prohibited conduct has ceased, and in such event (a) the date of delivery or time for performance will be extended by a period of time which Siemens determines necessary and (b) Purchaser will reimburse Siemens for Siemens' and its Subsuppliers' additional costs and expenses resulting from such delay, including but not limited to any for demobilization or remobilization.

D. Without limiting its obligations pursuant to Articles 13.A and 13.B above, Purchaser agrees not to reverse engineer, modify, improve, or make derivative works of Siemens' confidential information or intellectual property. Purchaser further agrees not to seek any intellectual property rights directly or indirectly based in whole or part on Siemens' confidential information or intellectual property without Siemens' prior written consent. Purchaser further agrees that if it obtains any such intellectual property rights, it has acted or will act as an agent for the benefit of Siemens for the limited purpose of obtaining and securing such intellectual property rights and will upon written direction from Siemens assign the same to Siemens.

E. Purchaser shall indemnify and hold Siemens harmless from and against any loss, damage or liability arising or resulting from non-compliance with the provisions of this Article 13.

F. When required by appropriate governmental authority, including governmental regulations, applicable law or regulation, by order of a court of competent jurisdiction or lawful subpoena (hereinafter collectively referred to as "Governmental Authority"), Purchaser may disclose such confidential information to such Governmental Authority; provided, however, that prior to making any such disclosure, Purchaser will: (a) provide Siemens with timely advance written notice of the proprietary information requested by such Governmental Authority and Purchaser's intent to so disclose; (b) minimize the amount of proprietary information to be provided consonant with the interests of Siemens and its Subsuppliers and the requirements of the Governmental Authority involved; and (c) make every reasonable effort (which shall include participation by Siemens in discussions with the Governmental Authority involved) to secure confidential treatment and minimization of the proprietary information to be provided. In the event that efforts to secure confidential treatment are unsuccessful, Siemens shall have the prior right to revise such information to minimize the disclosure of such information in a manner consonant with its interests and the requirements of the Governmental Authority involved.

#### 14. *Limitation of Liability*

A. PURCHASER EXPRESSLY AGREES THAT NEITHER SIEMENS NOR ITS SUBSUPPLIERS WILL UNDER ANY CIRCUMSTANCES BE LIABLE UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, FOR: ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OR PUNITIVE DAMAGES WHATSOEVER, EXCEPT AS OTHERWISE SET FORTH IN ARTICLE 14(C) BELOW DAMAGE TO OR LOSS OF ANY PROPERTY OR EQUIPMENT; LOSS OF INTEREST OR PROFITS OR REVENUE OR LOSS OF USE THEREOF; LOSS OF USE OF PURCHASER'S MATERIAL, EQUIPMENT OR POWER SYSTEM; LOSS OF, ALTERATION OR INABILITY TO ACCESS OR USE INFORMATION OR DATA; LOSS OF PRODUCTION (INCLUDING LOSS OF HYDROCARBONS); LOSS OF POWER; INCREASED COSTS OF ANY KIND, INCLUDING BUT NOT LIMITED TO CAPITAL COST, FUEL COST AND COST OF PURCHASED OR REPLACEMENT POWER; OR ANY CLAIMS OR DAMAGES OF CUSTOMERS OF PURCHASER.

B. PURCHASER EXPRESSLY AGREES THAT THE REMEDIES PROVIDED IT IN THE AGREEMENT ARE EXCLUSIVE, AND THAT UNDER NO CIRCUMSTANCES SHALL THE TOTAL AGGREGATE LIABILITY OF SIEMENS OR ITS SUBSUPPLIERS UNDER ANY

THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, EXCEED THE TOTAL PRICE PAID TO SIEMENS UNDER THE APPLICABLE PURCHASE ORDER.

C. SIEMENS' LIABILITY FOR PURCHASER'S PROPERTY DAMAGE DIRECTLY RESULTING FROM SIEMENS, ITS AFFILIATES AND ITS SUBSUPPLIERS NEGLIGENT ACTS OR OMISSIONS AT THE SITE OR WARRANTED DEFECT SHALL NOT EXCEED IN THE AGGREGATE THE LESSER OF (i) THE PURCHASER'S INSURANCE DEDUCTIBLE, (ii) THE DIRECT COST OF REPAIRING OR REPLACING SAID PROPERTY, (iii) THE LIMITATIONS IDENTIFIED IN ARTICLES 14 (A)&(B), OR (iv) FIVE HUNDRED THOUSAND DOLLARS (\$500,000). PURCHASER WILL WAIVE AND REQUIRE ITS PROPERTY INSURER TO WAIVE ALL RIGHTS OF RECOVERY AGAINST SIEMENS AND ITS SUBSUPPLIERS OF ANY TIER FOR LOSS OF OR DAMAGE TO PROPERTY AND EQUIPMENT OF PURCHASER IN EXCESS OF THE FINANCIAL OBLIGATION ASSUMED BY SIEMENS HEREUNDER. IN ADDITION, SIEMENS SHALL HAVE NO LIABILITY FOR DAMAGE TO PURCHASER'S PROPERTY AS THE RESULT OF ANY TECHNICAL FIELD ADVICE OR TRAINING SERVICES.

D. ALL LIABILITY OF SIEMENS AND ITS SUBSUPPLIERS UNDER THIS AGREEMENT SHALL TERMINATE NO LATER THAN THE EXPIRATION OF THE WARRANTY PERIOD.

E. THE PROVISIONS OF THIS ARTICLE SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISIONS SET FORTH ELSEWHERE IN THIS AGREEMENT.

#### 15. *Transfer; Ownership and Export Compliance*

A. Prior to the transfer to another party of any Equipment, Purchaser's Material, work product furnished hereunder by Siemens' or its Subsuppliers, or the transfer of any interest in said Equipment, Purchaser's Material or work product, or the facility in which or the site on which said Equipment, Purchaser's Material or work product is or will be installed or furnished, Purchaser shall obtain for Siemens written assurances from the transferee of limitation of and protection against liability following the proposed transfer at least equivalent to that afforded Siemens and its Subsuppliers under the Agreement.

B. If Purchaser is not the sole owner of the Equipment, Purchaser's Material, work product furnished hereunder by Siemens or its Subsuppliers, or the facility in which or the site on which the Equipment, Purchaser's Material or work product is or will be installed or furnished, Purchaser represents and warrants that it has (and will maintain) written assurances from each and every other owner of limitation of and protection against liability of Siemens and its Subsuppliers with respect to each and every such other owner at least equivalent to that afforded Siemens and its Subsuppliers under the Agreement.

C. If Purchaser transfers goods (hardware and/ or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by Siemens or works and services (including all kinds of technical support) performed by Siemens to a third party worldwide, Purchaser shall comply with all applicable national and international (re-) export control regulations. In any event Purchaser shall comply with the (re-) export control regulations of the Federal Republic of Germany, of the European Union and of the United States of America.

D. If required to conduct export control or sanctions checks, Purchaser, upon request by Siemens, shall promptly provide Siemens with all information pertaining to particular end customer, destination and intended use of goods, works and services provided by Siemens, as well as any export control restrictions existing.

E. PURCHASER SHALL INDEMNIFY AND HOLD HARMLESS SIEMENS FROM AND AGAINST ANY CLAIM, PROCEEDING, ACTION, FINE, LOSS, COST AND DAMAGES ARISING OUT OF OR RELATING TO ANY NONCOMPLIANCE WITH EXPORT CONTROL

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REGULATIONS BY PURCHASER, AND PURCHASER SHALL COMPENSATE SIEMENS FOR ALL LOSSES AND EXPENSES RESULTING THEREOF, UNLESS SUCH NONCOMPLIANCE WAS NOT CAUSED BY FAULT OF THE PURCHASER. THIS PROVISION DOES NOT IMPLY A CHANGE IN BURDEN OF PROOF.

F. Siemens shall not be obligated to fulfill this agreement if such fulfillment is prevented by what it determines to be any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

G. Transfer contrary to the provisions of Article 15 or in breach thereof, shall make Purchaser the indemnitor of Siemens and its Subsuppliers against any liabilities incurred by Siemens and its Subsuppliers in excess of those that would have been incurred had no such transfer or breach, as the case may be, taken place.

#### **16. Software License**

To the extent set forth in the Agreement, Siemens grants to Purchaser a nonexclusive, nontransferable license to utilize the Siemens Software furnished hereunder solely for Purchaser's internal use in connection with the Siemens equipment for which it is supplied or in which such Software is incorporated. All title and ownership of the Siemens Software, including, without limitation, the copyright to such Software and any improvement or development thereof, shall remain exclusively with Siemens. Purchaser may make one backup copy of the Software for the sole purpose of replacement of a worn, impaired, damaged, or destroyed original copy. Purchaser shall not itself, or with the assistance of others, reverse compile, reverse engineer, or in any other manner attempt to decipher in whole or in part the logic or coherence, underlying ideas, or algorithms of any Software licensed hereunder. Third party Software provided by Siemens may be subject to a separate license agreement and/or registration requirements and limitations on copying and use.

Insofar as the Software contains Open Source Software ("OSS"), Siemens will provide the applicable OSS license terms together with the Services. The OSS license terms shall prevail over this Contract. Details regarding any third-party software and OSS contained in the Services are available in the software documentation (e.g. README\_OSS).

The Purchaser shall notify Siemens promptly about any possible misuse of its accounts or authentication credentials or any security incident related to the provided Software or associated application.

#### **17. Compliance with Laws**

In the performance of work under the Agreement, Siemens and its Subsuppliers shall comply with all applicable provisions of Executive Order 11246 and 13496, as amended, relating to equal opportunity and non-segregated facilities, the Fair Labor Standards Act of 1933 and the Occupational Safety and Health Act of 1970. The price for the work is based on compliance by Siemens with applicable laws, regulations and technical codes and standards as they are in effect on the date of the Siemens proposal (or the effective date of the Agreement if no proposal was provided).

Purchaser shall be responsible for identifying to Siemens all applicable laws, regulations, codes and standards of state, provincial or local authorities, or any subdivision thereof, and shall bear the expense if Equipment modifications or changes to Services are necessary to comply with such laws, regulations, codes or standards. Any such modifications shall be made under the terms of Article 18, Changes. The work will comply with Siemens' standards which meet the intent of the applicable industry codes as of the date of the Siemens proposal (or the effective date of the Agreement if no proposal was provided).

#### **18. Changes**

A. Purchaser may request changes within the scope of the Agreement and, if accepted by Siemens, the price, performance, schedule and other pertinent provisions of the Agreement will be adjusted by mutual agreement of the parties prior to implementation of the change.

B. Expenses incurred by Siemens due to (i) delays, other than delays which are deemed to be within the reasonable control of Siemens, and (ii) changes in applicable laws, regulations and technical codes and standards or the imposition of new laws, regulations and/or technical codes and standards after the applicable date set forth in Article 17 will be treated as changes to the

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scope of work and the Agreement will be adjusted as set forth in the previous paragraph.

C. Siemens may make a change(s) in the Equipment, Services on Purchaser's Material or the other Services without additional compensation from Purchaser if such change(s) does not adversely affect the warranties, the interface with Purchaser's equipment, materials and plant, the technical soundness of the work, the operability of the facility where the Equipment or Purchaser's Material is installed or for which Siemens is providing Services under the Agreement, or the schedule.

#### **19. Inspection by Purchaser**

Purchaser shall have reasonable access to the areas of the Siemens plants where work under the Agreement is being performed to enable Purchaser to observe tests on the work. Siemens, if requested, will inform the Purchaser of those tests and procedures which can be witnessed. Should Purchaser elect to witness specific tests, Purchaser must so specify such requirement in ample time to permit Siemens to include said witness tests in the schedule. Siemens, if requested, will advise Purchaser of the schedule of such tests. However, no rescheduling of tests or delays in manufacturing or shipment will be made to accommodate such inspection. Siemens will exercise reasonable efforts to secure similar rights with respect to the inspection of the work at Subsupplier's premises.

#### **20. Purchaser Data Usage**

Purchaser acknowledges that in order to perform certain Services, Siemens may require access to Purchaser's non-personal data. Purchaser hereby grants Siemens a limited worldwide, perpetual, irrevocable, transferable, sub-licensable, royalty-free license to access, collect, store, compile and use the Purchaser's data for the purposes of providing Services to Purchaser and for purposes of generally improving Siemens services or products. Siemens' use of the Purchaser data to improve Siemens' services or products shall be in such manner as to provide anonymity as to the Purchaser.

Siemens shall own all right, title and interest in and to the Resultant Data. In the event that Resultant Data is incorporated in a report or other document generated by and output from software or hardware provided by Siemens as a feature of such software or hardware, the Purchaser shall own only personal title to any such report or document upon output thereof and have the right to make copies of, modify and distribute such report or document for the sole purpose for which the report has been created, and shall not share it with any third-parties without Siemens' consent.

#### **21. Removal of Hazardous Material**

Prior to the shipment of any Equipment or Purchaser's Material to Siemens for Services at Siemens' or its Subsuppliers' manufacturing plant or repair facility, the Purchaser must remove all Hazardous Material and ACM.

#### **22. Purchaser's Third-Party Parts Warranty**

Purchaser warrants that any and all Third Party Parts which may be the subject of any Services shall (a) be fully compatible with the corresponding part, component, equipment or material of the Original Equipment Manufacturer ("OEM") in terms of form, fit, and function; (b) shall be timely provided to Siemens hereunder; and (c) shall be capable of installation in the same manner and within the same time as the corresponding OEM part, component, equipment, or material.

Purchaser assumes the entire liability and risk arising out of or resulting from Third Party Parts and Services on Third Party Parts. Siemens' warranties set forth in Article 7 do not apply to any Third Party Parts or Services on Third Party Parts, and SIEMENS DISCLAIMS ANY AND ALL WARRANTIES AND REMEDIES, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE), OR OTHERWISE, FOR OR WITH RESPECT TO THIRD PARTY PARTS OR SERVICES ON THIRD PARTY PARTS.

#### **23. Indemnity**

Until the expiration of the applicable Warranty Period, Siemens shall indemnify, hold harmless and defend Purchaser its officers, directors and employees from and against any claims, demands, suits, liabilities, judgments, losses, damages, costs or expenses (including reasonable legal fees, costs and charges) for personal injury or death or loss of or damage to third party property (except property of customers of Purchaser or property incorporated in or intended to be incorporated in the project), to the extent caused by or arising out of any negligent act or omission or willful misconduct of Siemens,

or any of its officers, directors, agents, employees or Subsuppliers in connection with performance of work at Purchaser's Site under the Agreement ("Purchaser Indemnity Claim"). Siemens' indemnification obligations under this Article 23 are conditioned upon Purchaser providing Siemens with: (i) prompt notice of any Purchaser Indemnity Claim; (ii) the unrestricted right to defend any Purchaser Indemnity Claim; and (iii) full cooperation and support in the investigation, defense and/or settlement of the Purchaser Indemnity Claim.

Purchaser shall indemnify, hold harmless and defend Siemens its officers, directors and employees from and against any claims, demands, suits, liabilities, judgments, losses, damages, costs or expenses (including reasonable legal fees, costs and charges) for personal injury or death or loss of or damage to third party property to the extent caused by or arising out of any negligent act or omission or willful misconduct of Purchaser, or any of its officers, directors, agents, employees or subcontractors in connection with performance of work under the Agreement ("Siemens Indemnity Claim"). Purchaser's indemnification obligations under this Article 23 are conditioned upon Siemens providing Purchaser with: (i) prompt notice of any Siemens Indemnity Claim; (ii) the unrestricted right to defend any Indemnity Claim; and (iii) full cooperation and support in the investigation, defense and/or settlement of the Siemens Indemnity Claim.

For the avoidance of doubt, any property of the Purchaser, any owner, end-user or the final recipient of any Equipment, Services or Software provided under this Agreement is not considered a third party as per any of the indemnity obligations in the foregoing.

#### **24. Siemens Insurance**

In connection with the Agreement, Siemens shall maintain insurance (or self-insurance) as specified below:

A. **Workers' Compensation:** Siemens shall comply with workers' compensation laws (or equivalent) in each jurisdiction where work is performed, and shall maintain a Workers' Compensation and Employer's Liability insurance policy. If any work is to be performed on or near navigable waters, the policy shall include coverage for United States Longshoreman's and Harbor Worker's Act, Death on the High Seas Act, Jones Act, or their equivalent as required by the applicable law in the jurisdiction where such work is performed. The limits of such insurance shall be as follows:

Workers' Compensation: Statutory

|                       |  |
|-----------------------|--|
| Employer's Liability: | \$1,000,000 each accident<br>\$1,000,000 disease each employee<br>\$1,000,000 policy aggregate for disease |
|-----------------------|--|

B. **Commercial General Liability:** Siemens shall maintain Commercial General Liability insurance on an occurrence basis to provide coverage for bodily injury; personal injury; property damage; explosion, collapse and underground hazards (XCU); contractual liability (applicable to Siemens' obligations under Article 23 of this Agreement); and products/completed operations. Such policy shall provide limits of \$1,000,000 each occurrence and in the aggregate.

C. **Business Automobile Liability:** Siemens shall maintain business automobile liability insurance which shall include coverage for all owned, non-owned and hired vehicles with a \$1,000,000 Combined Single Limit.

D. **Excess Liability:** Siemens shall maintain excess liability insurance with a limit of \$4,000,000 each occurrence and in the aggregate. The policy shall be excess over the Commercial General Liability, Business Automobile Liability, and Employer's Liability coverages.

E. The coverages set forth in B, C and D above shall include Purchaser as additional insured to the extent that bodily injury, death and third-party property damage are caused by the negligent acts or omissions of Siemens or its Subsuppliers. The coverage afforded to Purchaser as an additional insured shall apply on a primary basis.

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#### **25. Purchaser's Insurance**

In connection with the Agreement, Purchaser shall purchase and maintain insurance as specified below:

A. **Property Insurance:** Purchaser shall purchase and maintain property insurance (including builder's risk, if applicable) on an all-risks basis covering physical loss or damage to the property at the Site (including the Equipment and Purchaser's Material after Delivery thereof), which coverage shall be maintained until the expiration of the last of the applicable Warranty Periods. Such insurance will include Siemens and its Subsuppliers as an additional insured, with a waiver of subrogation.

B. **Workers' Compensation:** Purchaser shall comply with applicable workers' compensation laws (or equivalent) and shall maintain a Workers' Compensation and Employer's Liability insurance policy. If the Site is on or near navigable waters, the policy shall include coverage for United States Longshoreman's and Harbor Worker's Act, Death on the High Seas Act, Jones Act, or their equivalent as required by the applicable law in the jurisdiction where the Site is located. The limits of such insurance shall be as follows:

Workers' Compensation: Statutory

|                       |  |
|-----------------------|--|
| Employer's Liability: | \$1,000,000 each accident<br>\$1,000,000 disease each employee<br>\$1,000,000 policy aggregate for disease |
|-----------------------|--|

C. **Commercial General Liability:** Purchaser shall maintain Commercial General Liability insurance on an occurrence basis to provide coverage for: bodily injury; personal injury; property damage; explosion, collapse, and underground (XCU) hazards; contractual liability (applicable to Purchaser's obligations under Article 23 of this Agreement); and products/completed operations. Such policy shall provide limits of \$1,000,000 each occurrence and in the aggregate.

D. **Business Automobile Liability:** Purchaser shall maintain Business Automobile Liability insurance which shall include coverage for all owned, non-owned and hired vehicles with a \$1,000,000 Combined Single Limit.

E. **Excess Liability:** Purchaser shall maintain Excess Liability insurance with a limit of \$4,000,000 each occurrence and in the aggregate. The policy shall be excess over the Commercial General Liability, Business Automobile Liability, and Employer's Liability coverages.

F. The coverages set forth in subsections C, D, and E above shall include Siemens as additional insured to the extent that bodily injury, death and third-party property damage are caused by the negligent acts or omissions of Purchaser or its subcontractors. The coverage afforded to Siemens as an additional insured shall apply on a primary basis.

#### **26. Miscellaneous Provisions**

A. **Shipment Dates:** Shipment dates are the dates the Equipment or Purchaser's Material will be ready for shipment from the manufacturing plant, Siemens repair facility or other facility where the Services are performed and are predicated on the prompt receipt by Siemens from Purchaser of all information necessary to commence and complete the work without delay or interruption. Unless otherwise stated in a Purchase Order, shipment dates are not guaranteed. Should Purchaser request Siemens to ship any Equipment or Purchaser's Material prior to a date established based on Siemens standard lead time for such Equipment or Purchaser's Material, and provided Siemens accepts in writing the earlier date, an additional fee will be applied to cover the costs associated with such expedited shipment.

B. **Waivers:** The failure of either Party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other Party of any of such provisions, shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of the Agreement or any parts thereof, or the right of either Party thereafter to enforce each and every provision.



C. Modification: No waiver, modification, or amendment of any of the provisions of the Agreement shall be binding unless it is in writing and signed by duly authorized representatives of both parties.

D. Headings: The headings used in the Agreement are not to be construed as modifying, limiting or expanding in any way the scope or extent of the provisions in the Agreement.

E. Assignment & Subcontracting: The Agreement will not be assigned by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment without such prior written consent shall be null and void. Notwithstanding the foregoing, Siemens may assign or novate the Contract, in whole or in part, to any of its Affiliates without Purchaser's consent and further may subcontract the same as Siemens may deem reasonably necessary for the fulfillment of the Agreement.

F. Governing Law: The Agreement will be construed and interpreted in accordance with the laws of the State of ~~Florida~~ *Nebraska* without application of its choice of law or conflict of law rules. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to any Agreement.

G. Personnel: Siemens reserves the right to change any of its personnel performing Services under the Agreement. In such event, Siemens will provide replacement personnel of equivalent capabilities and bear any additional travel and living expense associated with providing such replacement personnel.

H. Performance Guarantee(s) and Exclusive Remedy: There are no performance guarantees of the Equipment, Software and/or Services unless specifically set forth in the Siemens proposal. In the event any performance guarantees are provided in the Siemens proposal, Purchaser's sole and exclusive remedy and Siemens' sole and exclusive liability for any failure of the Equipment, Software and/or Services to comply with such performance guarantees under any theory of recovery shall be the liquidated damages specified in such Siemens proposal up to the limit specified therein, which liquidated damages shall only be paid on a "no harm, no foul" basis. The Parties agree that such liquidated are a reasonable determination of the damages that Purchaser would incur as a result of the failure of the Equipment and/or Services to meet the Performance Guarantees and do not constitute a penalty.

I. Environmental Compliance: Purchaser recognizes that the performance of Services at the Site may involve the generation of Hazardous Material. Purchaser shall at its expense furnish Siemens with containers for Hazardous Material and shall designate a waste storage facility at the Site where such containers are to be placed by Siemens. Purchaser shall handle, store and dispose of Hazardous Material in accordance with all applicable federal, state and local laws, rules, regulations and ordinances. Purchaser shall reimburse Siemens for additional costs, if any, incurred in complying with any such laws, regulations, rules and/or ordinances.

Siemens shall have no responsibility or liability with regard to any Hazardous Material, including any hazardous waste, which it does not know or have reason to know will be generated in the performance of the Services, and Purchaser shall indemnify and hold Siemens harmless for all pollution and environmental impairment arising from the Purchaser's property, the Equipment or the Services.

J. Asbestos and Thermal Insulation  
(1) The Purchaser warrants, represents, and certifies that, in any areas which may be accessed by Siemens or its Subsuppliers, any ACM which is or is contained in thermal insulation or sprayed-on surfacing material is conspicuously and specifically marked as ACM, and any other ACM is in a lawful condition.

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(2) Prior to Siemens' commencement of Services at the Site:

(a) The Purchaser shall, at Purchaser's expense remove all thermal insulation, sprayed-on surfacing material, and/or ACM, including ACM which may be disturbed during or removal of which is required for the performance of the Services; and

(b) The Purchaser shall ensure that any areas where any activities involving the abatement or removal of thermal insulation, sprayed-on surfacing material or ACM shall be conspicuously identified, posted and isolated, all as required by applicable law.

PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES THAT SIEMENS IN PERFORMING THE SERVICES AND PERMITTING EMPLOYEES TO ENTER THE WORK AREAS IS RELYING UPON THE COVENANTS, AGREEMENTS, WARRANTIES, CERTIFICATIONS AND REPRESENTATIONS MADE BY PURCHASER ABOVE.

Without limiting its other rights and remedies Siemens shall not be obligated to commence or may stop any work in any Work Areas unless fully satisfied that the Purchaser is in compliance with Article 26.J(1) above and this Article 26.J(2), and shall be entitled to an equitable adjustment in the schedule, price and other provisions of the Agreement affected thereby or otherwise affected by Purchaser's non-compliance.

(3) In no event shall Siemens be obligated to install, disturb, handle, or remove any thermal insulation, sprayed-on surfacing material, or ACM except as specifically agreed in writing by Siemens and only after Siemens has been provided acceptable chemical analyses verifying that the same are not ACM.

(4) Siemens makes no representation that it is licensed to abate ACM. Notwithstanding anything set forth in the Agreement and unless Siemens is provided satisfactory written evidence that such GPW is not ACM, Siemens shall be obligated to handle, remove, or reinstall generator wedges, packing, or high temperature gaskets (such materials herein "GPW") only if such activities are within the scope of the Services and only then to the extent that:

(a) such activities would be classified as Class II or Class III activity under United States Code of Federal Regulations Chapter 29 Section CFR 1926.1101 et seq.;

(b) such activities do not require a permit, license, or authorization;

(c) such activities are not likely to generate airborne asbestos fibers, and

(d) all such GPW is non-friable.

In all other cases, such activities shall be Purchaser's responsibility and Siemens shall be entitled to an equitable adjustment in the schedule, price and other pertinent affected provisions of the Agreement should the same not be performed in a timely manner. The disposal of any GPW or scrap or waste material resulting from its disturbance or removal shall in all cases be the Purchaser's responsibility.

(5) Purchaser shall defend, indemnify and hold Siemens and its Subsuppliers harmless against any and all claims, demands, damages, losses, liabilities, fines, penalties, costs or expenses, including without limitation any clean up or remedial measures arising out of, connected with, or resulting from the Purchaser's failure to comply with the provisions of this Article 26.J.

K. Integration: The Agreement contains the entire agreement and understanding between the parties as to the subject matter of the Agreement, and merges and supersedes all prior or contemporaneous agreements, commitments, representations, writings, and discussions between them. Neither of the parties will be bound by any prior or contemporaneous obligations, conditions, warranties, or representations with respect to the subject matter of the Agreement.

L. Dispute Resolution: Either Party may give the other Party written notice of any dispute arising out of or relating to this Agreement and not resolved in the normal course of business. The Parties shall attempt in good faith to resolve such dispute promptly by negotiations between executives who have authority to settle the dispute. Litigation of any dispute arising from, under or in connection with this Agreement shall be brought exclusively in either: (i) a federal court having jurisdiction over Orange County, Florida; or (ii) if a federal court does not have jurisdiction of the dispute, in a state court of competent jurisdiction presiding within Orange County, Florida. Each Party hereby consents to the personal jurisdiction of such courts and irrevocably waives, to the fullest extent permitted by applicable law and the laws of the State of Florida, any claim or any objection it may now or hereafter have, that venue or personal jurisdiction is not proper in such a court including, but not limited to, any claim that such legal action, suit, or proceeding brought in such court has been brought in an inconvenient forum. Each Party further consents and agrees that such litigation will be presented to and resolved by a judge presiding without a jury and **EACH PARTY EXPRESSLY WAIVES ITS RIGHT TO A JURY TRIAL**. The parties further agree that, for purposes of this provision, tort claims relate to this Agreement if they involve or relate to any products or service provided under or pursuant to this Agreement or any action or conduct related to this Agreement.

M. Survival: The provisions entitled "Intellectual Property," "Additional Conditions Applicable to Nuclear Installations," "Confidential Information," "Limitation of Liability," "Transfer, Ownership and Export Compliance," "Software License," the second paragraph of "Delivery, Title and Risk of Loss or Damage," Article 26.J.(5) of the provision entitled "Asbestos and Thermal Insulation", and "Dispute Resolution" shall survive termination, expiration or cancellation of the Agreement.

N. Site Safety: Purchaser shall comply with all federal, state, and local safety regulations and standards applicable to the site and to the equipment on which Siemens will perform the work. Siemens shall not be obligated to commence or perform work unless Purchaser's site complies with all applicable safety requirements. Should Siemens require use of Purchaser's equipment, including lifting devices, in performance of the Services, Purchaser shall ensure that such equipment complies with all applicable laws, including all OSHA regulations and certifications, and is capable of performance of the Services. If requested by Siemens, Purchaser shall provide Siemens with documentation confirming Purchaser's equipment's compliance with applicable law. In the event Purchaser's site safety is non-compliant, Siemens may suspend work until such time as Purchaser corrects the non-compliance. To the extent Siemens incurs additional time and expense as the result of Purchaser's non-compliance, Siemens shall be entitled to an equitable adjustment in the schedule, price and other affected provisions of the Agreement. Purchaser shall defend, indemnify and hold harmless Siemens from and against all damages, losses, costs and expenses (including attorneys' fees and litigation expenses) arising out of or resulting from the injury or death or damage to or destruction of property due to Purchaser's non-compliance with this Article or due to the condition of, defects, deficiencies, or non-conformities in Purchaser's equipment.

O. Severability: In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

Publicity: Neither party shall, without the prior written consent of the other party, issue any public statement, press release, publicity hand-out or other material relating to the Equipment and Services performed.

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Mayor Jessica Miller stated that the next item on the agenda was discuss/action regarding Resolution No. 25-2023 approving 4-way stop signs at the intersections of 7<sup>th</sup> & "D" Street and 7<sup>th</sup> & "E" Street.

Mayor Miller stated that this Resolution was brought to the Council in the interest of safety of the David City public school students and parents.

Discussion followed. Police Chief Marla Schnell stated that she would speak to Dr. Denker, David City Superintendent, regarding the stop signs and will report back to the Council at the next meeting.

Council member Keith Marvin made a motion to table Resolution No. 25-2023 approving 4-way stop signs at the intersections of 7th & "D" Street and 7th & "E" Street. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Council member Kevin Woita made a motion to approve Kobza auction to dispose of the vehicles that are city property with a minimum price set at the towing fee plus the Kobza's cost. Council Member Keith Marvin seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

### **DISPOSAL OF VEHICLES**

2001 White Chevrolet Silverado  
2004 Silver Chevrolet Malibu  
1995 Beige Oldsmobile 98 Regency Elite  
2007 Red Pontiac Grand Prix  
2004 Red Mazda RX 8  
2000 Red Chevrolet Cavalier  
1992 Blue Plymouth Laser

Council member Keith Marvin made a motion to table the sewer extension agreement with JEO to extend sewer to the Pauline Thege property. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Council member Keith Marvin made a motion to table the quote of First Wireless for purchase of Motorola Statewide Radios for the police department indefinitely. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea

City Council Proceedings

June 14, 2023

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Yea: 6, Nay: 0

Council member Pat Meysenburg made a motion to approve the purchase of a 2022 John Deere 1550 Commercial Front Mower for the Wastewater Department. Council Member Tom Kobus seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Abstain (With Conflict), Bruce Meysenburg:

Yea, Pat Meysenburg: Yea, Kevin Woita: Yea

Yea: 5, Nay: 0, Abstain (With Conflict): 1

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**Quote Summary**

**Prepared For:**  
 David City Waste Water Plant  
 NE

**Prepared By:**  
 Wyatt Marvin  
 AKRS Equipment Solutions  
 15151 South Highway 31  
 Gretna, NE 68028  
 Phone: 402-332-4967  
 wmarvin@akrs.com

Due to limited product availability, pricing and condition of the equipment being purchased and any trade-in value(s) are subject to change. AKRS is committed to communicating any changes to this sale. If applicable, you, as the purchaser, can choose to accept the revised pricing/condition or cancel your purchase with AKRS at that time.

**Quote Id:** 28814577  
**Created On:** 12 May 2023  
**Last Modified On:** 12 May 2023  
**Expiration Date:** 25 May 2023

| Equipment Summary   | Suggested List | Selling Price  | Qty | Extended            |
|---|----------------|----------------|-----|---------------------|
| 2022 JOHN DEERE 1550 TerrainCut™ Commercial Front Mower (Less Mower Deck) - 1TC1550DHNS080279 | \$ 25,662.00   | \$ 17,300.00 X | 1 = | \$ 17,300.00        |
| JOHN DEERE 72 In. 7-Iron PRO Commercial Side Discharge Mower Deck                             | \$ 6,409.00    | \$ 5,600.00 X  | 1 = | \$ 5,600.00         |
| <b>Equipment Total</b>  |                |                |     | <b>\$ 22,900.00</b> |

| Quote Summary              |                     |
|----------------------------|---------------------|
| Equipment Total            | \$ 22,900.00        |
| SubTotal                   | \$ 22,900.00        |
| Est. Service Agreement Tax | \$ 0.00             |
| Total                      | \$ 22,900.00        |
| Down Payment               | (0.00)              |
| Rental Applied             | (0.00)              |
| <b>Balance Due</b>         | <b>\$ 22,900.00</b> |

Salesperson : X \_\_\_\_\_

Accepted By : X \_\_\_\_\_

*Confidential*

Council member Bruce Meysenburg made a motion to approve the application of Scott Samek dba Samek Fireworks to sell permissible fireworks at 594 N. 4th Street. Council Member Kevin Woita seconded the motion. The motion carried.  
 Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
 Yea: 6, Nay: 0

Council member Keith Marvin made a motion to approve the quote of Applied Connective for new City Council laptop computers (HP Probook 450 15.6 inch G9 Notebook) without the extended warranty. Council Member Kevin Woita seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Nay, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 5, Nay: 1

Interim City Administrator Tami Comte stated that the current Chromebook computers that the Council has will be passed on to the Planning Commission members for their use.

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## Executive Summary

### About Us

For nearly 20 years, Applied Connective Technologies, LLC, (Albion, Norfolk, Columbus) has been helping partners leverage technology to achieve maximum security, efficiency, and profitability. With 50+ highly skilled full-time staff, we provide our partners unrivaled service and support and cutting-edge solutions in managed IT (MSP) services, commercial telephone systems, security, surveillance, fiber optic, low voltage cabling, and professional audio video. Applied Connective is a one touch point vendor for all of your technology needs.

### Non-Contract IT and Technical Services

*Please note, we are asking that your business consider a transition to Managed IT services in order for our team to properly and promptly provide professional services. The cyber and technology landscape has changed significantly over the last several years, and the skill set and service delivery methods necessary to meet this new demand have evolved as well. Applied Connective takes customer service very seriously and strives to maintain adequate staffing levels to meet the service needs of all customers. We also take cyber security seriously and will be enforcing minimum requirements for support, management, and protection of your IT systems. As your requirements to meet cyber liability insurance criteria have changed, so have ours.*

*By opting for Managed IT and technical services, not only will you enjoy a fixed cost delivery for your support, help desk, management, and monitoring needs, but you'll also allow Applied Connective to staff appropriately so we can respond quickly when you need it most. Please review the PDF attached to this proposal for additional details on our Managed Services offering and inquire with our staff for a proposal on this transition.*

### Special Order Items

This proposal contains special order items. These items can not be cancelled or returned once order has been processed by manufacture or distributor. If you have questions as to which items are special order, please consult with your sales rep.

### Down Payment

Please note, orders of substantial hardware, software or licensing cost could require a down payment before hardware is ordered and prior to scheduling of project. Should these costs exceed \$5,000 a down payment invoice of 35% of the total project will be sent. Once ordered and estimated lead time known, a project manager will contact you to coordinate scheduling details.

## Hardware

| Description   | Price    | Qty       | Ext. Price |
|---|----------|-----------|------------|
| HP ProBook 450 15.6 inch G9 Notebook PC - Windows 11 Pro - Intel® Core™ i5-1235U (up to 4.4 GHz with Intel® Turbo Boost Technology, 12 MB L3 cache, 10 cores, 12 threads), 16 GB memory; 512 GB SSD storage, 15.6" diagonal FHD display, 1 year (1/1/0) limited | \$819.00 | 7         | \$5,733.00 |
| HP Extended Warranty - Hardware Support With Accidental Damage Protection - 3 Year - Warranty - On-site   | \$288.99 | 7         | \$2,022.93 |
|   |          | Subtotal: | \$7,755.93 |

Council member Keith Marvin made a motion to pass and adopt Resolution No. 26-2023 extending the 0.5% sales tax to be used for water treatment works and systems, water distribution facilities, and water resource projects. Council Member Kevin Woita seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

**RESOLUTION NO. 26-2023**

BE IT RESOLVED by the Mayor and Council of the City of David City, Nebraska as follows:

Section 1. The Mayor and City Council find and determine that section 77-27,142 of the Revised Statutes of Nebraska, states any incorporated municipality by ordinance of its governing body is hereby authorized to impose a sales and use tax of one-half percent, one percent, one and one-half percent, one and three-quarters percent, or two percent upon the same transactions that are sourced under the provisions of section 77-2703.01 to 77-2703.04 within such incorporated municipality of on which the State of Nebraska is authorized to impose a tax pursuant to the Nebraska Revenue Act of 1967, as amended from time to time. The City of David City has not submitted a proposition for the levy of a sales tax to the electors of the City of David City within the last six (6) months. THERE DOES EXIST A SALES AND USE TAX OF 0.5 PERCENT THAT EXPIRES OCTOBER 1, 2024. The City of David City shall not impose a sales and use tax, until an election has been held and a majority of the qualified electors have approved such tax.

Section 2. A special election is hereby called and will be held in conjunction with the Primary Election to be held on May 14, 2024, at which there shall be submitted to the qualified electors of the City of David City, Nebraska the following proposition:

"Shall the governing body of the City of David City, Nebraska continue to impose a sales and use tax of ONE-HALF PERCENT (0.50%) upon the same transactions within the City of David City on which the State of Nebraska is authorized to impose a tax, for a ten (10) year period commencing October 1,

2024 and ending October 1, 2034 with the proceeds collected to be used for water treatment works and systems, water distribution facilities, and water resources projects, including, but not limited to, pumping stations, transmission lines, and mains and their appurtenances within the City of David City, Nebraska?"

If a majority of the votes cast upon such question shall be in favor of such tax, then the governing body of the City of David City shall be empowered as provided by Section 77-27,142 of the Revised Statutes of Nebraska, and shall forthwith proceed to impose a tax pursuant to the Nebraska Revenue Act. If a majority of those voting on the question shall be opposed to such tax, then the governing body of the City of David City shall not impose such tax.

The ballots to be voted upon and cast at said election shall have been printed thereon the foregoing proposition, followed by the words: "FOR said sales and use tax" and "AGAINST said sales and use tax" following the proposition.

Section 3. Notice of said election shall be given to the qualified electors of said City by publication at least one time each week for three successive weeks prior to such election and a copy of the sample ballot shall be published one time, not more than fifteen (15) days nor less than two (2) days prior to the election, such notice and sample ballot to be published in The Banner Press, a newspaper printed and of general circulation in said City, and the County Clerk of Butler County, Nebraska be and hereby is directed to cause such notice and sample ballot to be published.

Section 4. The City Clerk of the City of David City be and hereby is authorized and directed to certify a copy of this Resolution by June 30, 2023, to the Butler County Clerk, who shall designate the polling places, appoint the election officials and otherwise conduct the election as provided by law. The City does hereby agree to reimburse said County Clerk for the expenses of conducting the election. As required by Section 32-802 of the Revised Statutes of Nebraska, 2022 Cumulative Supplement, the County Clerk shall provide publication of the Notice of Election in a newspaper designated by the County Clerk no later than forty (40) days prior to the day of said election and such notice shall be posted in the office of the County Clerk no later than forty (40) days prior to such a date of election.

Section 5. Notice of submission of the question imposing the sale and use tax upon the same transactions within the City of David City, Nebraska on which the State of Nebraska is authorized to impose a tax shall be given not more than thirty (30) days nor less than ten (10) days prior to the election, by publication one (1) time in The Banner Press, a paper published in or of general circulation in the City of David City, Nebraska pursuant to section 77-27,142.04 of the Revised Statutes of Nebraska.

Section 6. The City Clerk shall make as part of the minutes the form of ballot and form of notice of said sales tax election and shall be substantially in the form submitted to this meeting. The City Clerk of the City is hereby authorized and directed, in conjunction with the County Clerk conducting the election, to arrange for the printing of the necessary ballots for said election and to do all other things and take all other action appropriate or necessary in order to cause said proposition to be submitted to the qualified electors of the City as above provided.

At least seventy percent (70%) of all of the members of the City Council consented to Resolution No. 26-2023, and declared by the Mayor duly passed and adopted.

Passed and approved this 14<sup>th</sup> day of June, 2023.

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Mayor Jessica Miller

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City Clerk Tami Comte

Council member Keith Marvin made a motion to approve using ARPA funds for the "O" Street project. Council Member Bruce Meysenburg seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Council member Kevin Woita made a motion to adjourn. Council Member Keith Marvin seconded the motion. The motion carried and Mayor Jessica Miller declared the meeting adjourned at 8:55 p.m.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0



CERTIFICATION OF MINUTES  
June 14, 2023

I, Tami Comte, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of June 14, 2023; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

\_\_\_\_\_  
Tami Comte, City Clerk